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The Permanent Court at the Hague

BY DR. ALGERNON S. CRAPSEY

EDITORIAL NOTE.—[In this article, written expressly for CASE AND COMMENT Dr. Crapsey depicts the Permanent Court at the Hague as it now exists in actual operation. Dr. Crapsey is especially qualified to speak upon this subject, having attended the second conference at the Hague and being deeply interested in the cause of universal peace. He is a well-known writer and lecturer, his two latest works being "Religion and Politics," published in 1906, and the "Rebirth of Religion," published in 1907.]

THE 22d day of July should, and doubtless in due time will, be set apart as a holiday by the people of all nations. On that day men, women, and children of every land, leaving their common tasks, will celebrate with pomp and ceremony, with dance and song, the anniversary of one of the most important, if not the most important event in the political and social life of man on the earth.

For on the 22d day of July in the year 1899, twenty-eight sovereign states, including all the great powers of Europe, Asia, and North America, took order to establish a permanent court of international jurisdiction to try and determine questions that might from time to time arise between the nations and threaten the peace of the world.

This action was taken by the duly accredited representatives of the signatory powers at the Peace Conference held in "The House in the Wood" (Huisten Bosch) at The Hague on the day and year above recorded, that will be henceforth memorable in the history of the world.

The significance of this event will be seen more and more clearly as time goes on. Men of the future will look back to it as we Americans look back to the Declaration of Independence. It marks a new era in time. Before this event, war was the court of last resort between the nations, and all international questions of a critical nature were settled by the ordeal of battle. Brute force sat in the seat of judgment, and might, not right, ruled in that forum. Before the establishment of the Permanent Court of International Justice at The Hague, each nation, as an attribute of its sovereignty, claimed the right to be the final judge in its own quarrels. That which every nation has long since denied to every citizen under its rule, it has until now claimed, and even yet in a measure claims, as an inalienable natural right.

It has long since been established as a principle of jurisprudence that no man may be a judge and a party in the same cause. The slightest personal interest in the question at bar incapacitates a man from acting as judge in any given case. By the establishment of the Permanent Court at The Hague, the sovereign powers have taken a great step toward the recognition of this principle as binding upon the nations, even as the nations have made it binding upon individuals. The saying that the King can do no wrong is obsolete. It does not and cannot apply to the relations of the various nations each to the other. Nations are only enlarged personalities. Their actions, like the actions of individual men and women, have a moral quality, are good or bad, are just or unjust, and

must come for judgment to the bar of a court where each nation shall be the equal of every other nation; where there shall be no respect of persons, but every question shall be decided upon its merits as justice and equity may demand.

In creating the Permanent Court at The Hague, the nations acknowledged their own moral fallibility. They abandoned, each for itself, the doctrine of absolute sovereignty; they acknowledged the over-sovereignty of the world.

In the modern world no nation can be absolute unless it can conquer all other nations and hold them in subjection, or unless it can build a wall around itself and isolate itself from all other peoples. But neither of these courses is possible in the modern world. The age-long western dream of universal empire, and the equally age-long eastern dream of absolute isolation, are passing into the waking consciousness of a world life in which nationality, like personality, is an indestructible factor. The world might as well think to flourish by destroying its nations, as a nation to flourish by destroying its personalities. The western nightmare of universal conquest, and the eastern pipe dreams of complacent self-sufficiency, are both merging into the world consciousness, wherein all the nations come to know themselves, each in its relation to other nations, not as foreigners and foremen, but as members one of another and brothers in the household of man.

Brain vs. Brawn.

The signatory powers at The Hague were compelled to do as they did by a power greater than themselves. They were forced to their action by the pressure of the growing intelligence of mankind. The old method of settling international disputes by an appeal to arms has long been condemned by the enlightened thought of the world. It is a survival in the modern world and intellectual era out of the primitive period, when brawn, not brain, ruled among men. Then Herakles, with his big stick, was the typical hero, and the final argument of Joab with Abner was a stab under the fifth rib. Seen in the light of the modern intellect, war is worse than wrong; it is stupid. When men come up against a question, and have not intelligence enough to think it out, then they have to fight it out. The battle field, like the prize ring, is the resort of men of a low order of intelligence.

Science Working for Peace.

While the intelligence of the world condemns war, it is at the same time working to make war impossible. The most potent ally of the peace party in the world is natural science. It is hoisting war with its own petard. Modern inventive genius is making the machinery of war so costly and so destructive, that the nations can no longer afford to indulge in this pastime. The Peace Conference at The Hague was called to action by the fact that the appalling expenses of preparation for war on the part of the various governments are crushing the peoples of all lands into ever deeper and deeper misery.

Modern science has not only made war expensive, it has also made it uninteresting. The modern soldier can find no exhilaration in lying on the ground and shooting at a speck a mile away. The lust of killing is gone, and a battle field is as stupid as a target practice.

War is Bad Form.

To the modern man war is not only disgraceful, it is disgusting. Butchery of all kinds is growing more and more distasteful to the refined soul. The grossness of the ancient and medieval worlds is shocking to the men and women of to-day. It is bad form to give a man a bloody nose, to blow out his brains, or disembowel him. Modern realism is the deadly foe of war. It sees the battle field not as a scene of glory, but as a spectacle of horror. It is no longer the business of a gentleman to fight, he leaves that kind of thing to the bully and the bravo.

The Immediate Cause of The Hague Court.

The Hague Court had its origin in the financial necessities of the Russian government. One day, it is said, the Minister of War in the Russian Cabinet came to the Minister of Finance and

said: "All Europe is arming with a new rifle, we must have the same weapon or be at disadvantage." The Minister of Finance said, "We have no money." The Minister of War said, "We must see the Czar." The Czar said, "I will call upon the nations to agree not to purchase new weapons, and so I will save my money." Such is the legend concerning the calling of the first Peace Conference at The Hague. Whether this legend be true or not, it is a fact that His Imperial Majesty did on the 4th day of August, 1898, through his Minister of Foreign Affairs, address the diplomatic representatives accredited to his court, in which address he declared: "The maintenance of general peace, and a possible reduction of the excessive armaments which weigh upon all nations, present themselves, in the existing conditions of the whole world, as the ideal toward which the endeavors of all nations should be directed." With these and many like words,

"The Hercules of Nations, shaggy browed,
Enormous limbed, supreme on Steppe and plain,"

invited the nations to join with him in a conference that should consider the ways and means of settling the disputes of nations by some method less expensive, less destructive, and less brutal than war.

This invitation of the Czar met with an eager response, and in the following year the accredited representatives of the various nations then in diplomatic relations with the Czar met in the Huisten Bosch, at The Hague, to take order for the peace of the world. The South American Republics, not having representatives at the Imperial Court of Petersburg, were not participants in the first Hague Conference, but they were among the first to take advantage of its permanent court of international justice and were duly and properly represented in the second Peace Conference at The Hague, in 1907.

The first conference was, in effect, a world congress, having delegated powers from the various governments to discuss and determine certain matters of common concern.

This congress considered many subjects and issued various recommendations, rescripts, and declarations for the information and guidance of the nations. But the most important act of the congress was the creation of a permanent court of international justice to try and determine disputes between nations and causes between individuals of different nationalities.

The Constitution of the Court.

The first difficulty in the way of the creation of the desired tribunal was the *personnel* of the court itself. It was evident that the nations could not each have a member upon this permanent court. Such a body would be unwieldly and ineffective. It was equally evident that there was no electorate nor appointing power which could choose out of the world men competent to sit upon so august a tribunal. The congress showed great wisdom in meeting this difficulty. It provided that each of the signatory powers should appoint four men of ability, versed in international law, as members of this court.

When any nations having matters in dispute wish to avail themselves of this court, then each of them is to choose one or two men out of this body of judges, and these are to choose a third, of if there be four, a fifth as umpire, which umpire, according to the original articles, was *ex officio* presiding judge of the court. This provision was, however, changed at the instance of the first court, to come into existence under the new provisions, and the umpire is now simply one of the judges, of equal rank with the rest, and the court is free to choose its own presiding judge.

By means of this expedient, while the court is permanent, the judges who try any given case are chosen for that occasion out of the whole body of judges waiting the call to duty. These judges receive payment only while actually sitting in court. This system has been found to work admirably in practice. Some abuses, such as the employment of judges when not themselves sitting as counsel, have been corrected, and the

Permanent Court is now an established institution, winning for itself the confidence and submission of the nations. It has already decided many cases of far-reaching importance, and from these decisions there has been no appeal.

Right of Revision.

Article LV. of The Hague Convention acknowledged the right of the powers in litigation to reserve in the compromise the right to demand a revision of the arbitral verdict. This demand may only be made on the ground of the discovery of some new fact which would be of a nature to exercise a decisive influence on the verdict. The same arbitral tribunal that has adjudicated the case is also required to rule on the merits of the demand for revision. The original compromise should determine the period within which the demand for a revision is admissible.

The court in the Pious Fund Case strongly recommended that this privilege of revision be used as little as possible. In fact, so far as the present writer knows, it has not been used at all.

Language.

Differences in language create a natural difficulty in the constitution of an international court. If the court were to endeavor to keep its records in all languages, endless labor would be necessary and endless confusion follow. At the first Peace Conference at The Hague, French was made the official language of that body, and French is the official written language of the Permanent Court. Oral pleadings may be made in any language which the parties in litigation may agree to use. As a matter of fact, oral pleadings have been made for the most part in English, and English may be said to be the official spoken language of the court. It is incumbent upon every lawyer who is called to practice before this tribunal to have a working knowledge of both French and English.

The Bureau of Record.

The Permanent Court of Arbitration maintains at The Hague a bureau of record. To this bureau the signatory powers agree to send, and do send for custody and reference, all treaties, international agreements, and documents bearing upon international affairs. When a case is to come before the court, the parties in litigation send to this bureau the preliminary examination of the question to be adjudicated. A full statement of all the facts bearing on the matter at bar, and all documents relating thereto, must be filed in this bureau, and this bureau may be intrusted with the duty of serving these papers upon the opposite party. It thus becomes not only a bureau of record, but also an agent of the contending parties in all that pertains to the serving of papers and the like. The immense value of the bureau of record needs no comment. The future historian will not have to travel from capital to capital of the nations to study the documents necessary to the understanding of international relations. All the documents bearing upon this subject will henceforth be found in the bureau of the Permanent Court at The Hague. Nor will it be necessary for parties engaged in international litigation to seek each other at the ends of the earth in order to serve necessary papers. Service at the bureau of the Permanent Court at The Hague is all sufficient.

Power of Citation and Enforcement.

The Permanent Court at The Hague is not, and under the circumstances cannot be, other than an arbitral tribunal. It has no power to compel the defendant in an international litigation to plead before it, nor can it compel either of the contending parties to accept its decrees. There is as yet no police power behind the court to enforce its commands. The parties in litigation which plead at its bar are there by mutual consent, and, when decision is rendered, it is the same mutual consent that makes the decision binding. It may be said that a court so situated is just no court at all. It goes through the motions of judicial life without being alive. It is of the very essence of the court that it can enforce its decrees. But while it is true that this court has at present no physical power to sustain its judgment,

it is possessed of an immense moral power. It has behind it the moral force of the world. It is an established organ of world opinion. Any nations who have consented to The Hague Convention establishing the court who shall henceforth refuse to submit their quarrels to its adjudication will be visited with the condemnation of the world, and any nation which, having submitted its case to the court, shall refuse to abide by its decision, will be outlawed by the rest of the nations. This world condemnation and national outlawry will be found to be more effective than the constable's mace or the policeman's club. They will be as powerful to secure obedience to the behests of this august tribunal as were excommunication and the interdict, in the middle age, to secure obedience to the spiritual power of the Church.

The Court in Action.

The life of the court in action may be viewed to advantage by glancing at one or two of the more important cases that have come before it. The first case to be decided by this tribunal was what is known as the Pious Fund Case, which was a matter in dispute between the United States and Mexico. Space forbids our discussing this case at large. It is important only as being the case in which the Permanent Court found itself, was able to correct infelicities in its mode of procedure, and prove itself able to accomplish the task given it to do.

The Venezuela case gave the court its first opportunity to show what it could do in the way of settling grave international disputes that were bringing the nations to the verge of war. Venezuela, though one of the lesser powers, had long been a disturbing factor in world politics. It had gone recklessly into debt, and had refused to met its obligations. Corrupt and usurping governments had pillaged the natives and cheated the foreigner. But, on the other hand, speculative foreigners had taken advantage of a weak and corrupt government, and, in collusion with the politicians, had defrauded the people of Venezuela and loaded them with an unjust debt.

Soon after the first Conference at The Hague, England, Germany, and Italy were making ready to enforce the claims of their subjects by means of their military power. Had they done this, intervention on the part of the United States would have been inevitable, and a general and disastrous war would have followed. Venezuela, though not one of the signatory powers, appealed to The Hague Court. The aggressive parties at first refused the offices of that court, and asked Theodore Roosevelt, then President of the United States, to act as judge in the matter. This Mr. Roosevelt, to his credit, refused to do, and referred all the parties to The Hague, with a gentle hint that if they did not go there Uncle Sam would want to know the reason why. They went. And the first great case came up for trial before the world court. The United States appeared as a defendant in the case. In Mr. Penfield's argument the cause is cited as "Great Britain, Germany, and Italy *versus* the United States and others." The very title of the case makes an epoch in the history of the world. Here are great nations suing and being sued before an impartial international tribunal. The documents in the case have all the interest of great romance. Documents are filed, pleadings are made, a decision is rendered and accepted by all parties; it is a wondrous event.

Five nations on the verge of war have settled their quarrel, not by military or diplomatic, but by judicial, method. A new era has dawned.

The American Diplomatic Service

BY
HON. FREDERICK VAN DYNE
Assistant Solicitor, Department of State.

EDITORIAL NOTE.—[Mr. Van Dyne has been connected with the Department of State for nearly twenty years. He recently held the position of consul at Kingston, Jamaica. He has published several excellent legal treatises: "Citizenship of the United States," 1904; Van Dyne on "Naturalization," 1907; and an exhaustive article on "International Extradition," which appeared in the Encyclopædia of Law and Procedure, in 1906. Mr. Van Dyne's latest work on "Our Foreign Service, the A. B. C. of American Diplomacy," was issued in 1909. His article herein presented was written expressly for CASE AND COMMENT, and deals with a subject with which his studies and public services have made him thoroughly familiar.]

OF greater importance to the nation than its Army or Navy is its Diplomatic Service. Because it acts quietly and often secretly, and its accomplishments frequently become known only after the lapse of time, it attracts less attention than does the military arm of the government. The efforts of diplomacy often avert or postpone war. Assistant Secretary of State Huntington Wilson, in an address at the meeting of the National Peace Congress in Baltimore in May last, referred to the fact that the present administration has within two years actually prevented three wars. He said:

"When the opposing armies of Ecuador and Peru were within sight of each other, the telegraphic proposal of the United States brought about the tripartite mediation of the Argentine Republic, Brazil, and the United States. The proposal was received by Ecuador and Peru, and they abstained from war. A few months ago the Dominican Republic and Haiti were at swords' points. The influence of the government of the United States stayed their hands. Also within the last few months the good offices of the United States put an end to civil war in Honduras. Here are three actual achievements of peace, which is your ideal. These things the President and Secretary Knox have done."

A still more recent instance may be mentioned, of the successful exercise of diplomacy to avert war, in the delicate situation existing on the Mexican frontier.

It has been well said that "if a diplomatic officer is successful in shortening a war by a single day, he may save his

government more than its entire outlay for its diplomatic service for a year, besides the loss of life and destruction of property." When war comes, inevitably, diplomacy continues its work and seeks to make peace.

Besides these important offices connected with war, diplomacy is largely concerned in the advancement of the prosperity of the country. One of the chief functions of the diplomatic officer is to give his government prompt information on all that occurs in the country of his residence, that may affect the commercial, industrial, or scientific development of his own state.

The promotion of our foreign trade has generally been considered to be a function of our Consular Service, rather than of the Diplomatic branch; but during the present administration the aid of our diplomatic officers has been enlisted to extend American commercial interests, and with excellent results.

The term "Dollar Diplomacy" has been applied to the efforts of our diplomatic representatives to assist in securing contracts and concessions in foreign countries for our own citizens, and to aid in placing loans for American syndicates. The result of these activities has been to obtain for the United States its share in the material development of foreign countries, particularly in the East and in Latin America.

Upon whom does the conduct of our foreign diplomacy devolve? While the Secretary of State, under the direction of the President, has general superintendence of our foreign relations and initiates our foreign policy, diplomatic intercourse with foreign governments is conducted through our authorized agents abroad, who are called diplomatic officers.

Appointments.

As it is essential that appointees should be in sympathy with his policies, the President generally personally selects ambassadors and envoys to the more important posts, upon his own knowledge of the qualifications of the individuals. Candidates for the less important positions ordinarily secure the indorsement of the Senators and Representatives from their states and other influential persons, and file their applications in the Department of State. When the President calls up the matter of diplomatic appointments, these applications and indorsements are laid before him. In making these appointments some regard is usually had to geographical distribution.

Until five years ago secretaries to embassies and legations were appointed in the same manner as ministers, but by a Presidential Order of November 10, 1905, Mr. Roosevelt applied civil service principles to this branch of the Diplomatic Service, and directed that thereafter vacancies in the office of secretary of embassy or legation should be filled by promotion or transfer from some branch of the foreign service, or by the appointment of persons found to possess the requisite qualifications, who shall have been designated by the President for examination. These examinations, which are held at the Department of State, by a board of examiners consisting of the Assistant Secretary of State, the Solicitor for the Department, the Chief of the Diplomatic Bureau, the Chief of the Bureau of Appointments, and the Chief Examiner of the Civil Service Commission, are both written and oral, and include the following subjects: International law, diplomatic usage, French, Spanish, or German; the natural, industrial and commercial resources of the United States, especially with reference to the possibilities of increasing and extending the foreign trade of the United States; American history, government, and institutions; and the modern history since 1850 of Europe, Latin America, and the Far East. The object of the oral examination is to determine the candidate's alertness, general contemporary information, and natural fitness for the service, including mental, moral, and physical qualifications, character, address, and general education and command of English. Candidates must be American citizens, between the ages of twenty-one and fifty years.

While this does not apply to the appointment of principal diplomatic officers, that the principle of promotion for

meritorious service obtains in the Diplomatic Service to a marked degree is shown by the following statement:

The United States has forty-four principal diplomatic representatives in foreign countries,—ten ambassadors, thirty-one envoys extraordinary and ministers plenipotentiary, two ministers resident and consuls general, and one agent and consul general. Eight of the ten ambassadors have had previous diplomatic experience,—one of them as Secretary of State, and seven as ministers. Antedating their service as ministers, three of the ambassadors served as Assistant Secretary of State. One of the three also served as secretary of legation and chief clerk of the Department of State. Of the thirty-one envoys, one served previously as minister in four different countries, two served at three different posts, four at two, one was Assistant Secretary of State, nine were promoted from the position of secretary of legation or embassy, and seven served as consul. As to length of service, three of the ambassadors have spent fourteen years in our foreign service, one has had thirteen years service, and one has served twenty years. Of the ministers, two have served ten years, one thirteen years, four for fourteen years, one fifteen years, two sixteen years, and one twenty years. This indicates that the Diplomatic Service of the United States, contrary to the popular impression, offers a career to those who enter it.

Salaries.

The salaries paid our diplomatic representatives are inadequate, and much smaller than those paid by other important countries to their representatives. Our ambassadors receive $17,500 per year, our envoys and ministers plenipotentiary $10,000 and $12,000. The smallest salary paid to a principal diplomatic officer in our service is $5,000, to our minister resident in Liberia. Our diplomatic representatives receive no allowance for entertaining or house rent. The British, French, and Russian ambassadors in Washington receive salaries twice and three times as large as that of our ambassadors, and are also given large allowances for rent and entertaining. It is impossible for our representatives at the more important posts to meet their necessary social obligations on the salaries allowed them. It is said that our ambassadors in London, Paris, Rome, Vienna, and St. Petersburg are obliged to devote the entire amount of their salaries to the item of house rent alone. The action of Congress at its session last winter, authorizing a plan for the gradual purchase or construction of residences for our diplomatic officers, and appropriating $500,000 a year to devote to this purpose, will afford a measure of relief to our poorly-paid representatives, and make possible the acceptance of these positions by others than men of great wealth.

The salary of a first secretary of embassy is $3,000, of a second secretary $2,000, and of a third secretary $1,200 a year. That of a first secretary of legation is $2,625, and of a second secretary $1,800 a year. When the ambassador or minister is absent from his post, the first secretary acts as *charge' d'affaires ad interim,* and receives, while so doing, an allowance equal to one half the salary of the principal officer. These places are much sought after because of their social position and the opportunities afforded for advancement in the service. One of our ambassadors, Mr. Rockhill, rose to his present position from the post of second secretary of legation. Henry White, John W. Riddle, and Lloyd C. Griscom, formerly ambassadors, now retired, all began their diplomatic career as secretaries of legation.

Qualifications.

Diplomacy is a most important and dignified profession, and demands great ability and attainments as well as broad experience. Only men of approved honor and integrity, who have won recognition at home, and shown themselves fit to uphold the dignity and represent the interests of their country abroad, should be appointed to the office of ambassador or envoy. In addition to experience in large affairs, the diplomatic officer should have a good general knowledge of history,—of his own

country and of the other great countries of the world; of treaties,—especially those between the United States and the country to which he is sent; of law,—international law, and the law of both countries; and of the French language and that of the country to which he is accredited. He should be familiar with the usages of trade and commerce, and know the elementary principles of the common law. A knowledge of French is indispensable in European countries, as it is the generally received language of diplomacy there. Wheaton, the distinguished diplomatist and author of international works, declared that "a diplomatic officer at a European court might as well be deaf and dumb as to be ignorant of French,—the language which is the universal tongue of diplomacy." In Latin American countries, a familiarity with Spanish is a *sine qua non*. It goes without saying that a diplomatic officer should be a person of good manners, acquainted with the usages of the best society. He should also possess a good temper, tact, shrewdness, and discretion.

Duties.

The chief duty of a diplomatic representative is to cultivate and maintain friendly relations between his own government and that of the country to which he is sent, and to endeavor by every proper means to prevent misunderstandings. He is required to keep his government informed of the political events and the policies and views of the government to which he is accredited, as well as of public opinion there, when likely to have a bearing on the affairs of his own country.

A very important occasional duty of diplomatic officers is the negotiation of treaties. When a diplomatic officer is intrusted with such duty, specific instructions are furnished him, and a "full power" is sent him by the Department of State.

One of the gravest duties of diplomatic officers is that of extending protection to his fellow countrymen who call upon him for assistance. Complaints of various kinds are brought to their attention, and it is frequently necessary for diplomatic officers to take up such matters with the local government, when impossible to adjust them otherwise. The issuance of passports is another function requiring the exercise of care and good judgment, and involving a knowledge of the somewhat complicated subject of citizenship.

Important duties concerning the extradition of fugitive criminals devolve upon diplomatic officers. They are also sometimes required to present and urge upon foreign governments the pecuniary claims of American citizens, arising out of injuries to person or property.

Marriages of American citizens sometimes take place in legations or embassies; and in such cases the diplomatic officer is required to ascertain whether the laws of the country where the marriage is to occur have been complied with, so that the ceremony may be legally performed.

An important part of a diplomatic officer's duty is to cultivate social intercourse. To make him most useful to his government, it is essential that he should be personally acquainted not only with the government ministers, but with other leading public men in and out of office. He should, of course, familiarize himself with the traditional usages and custom, and the etiquette of the court where he resides. He should also cultivate friendly personal and social relations with the various members of the diplomatic corps at the place of his residence, as they may be able to assist him in many ways.

Not a small part of the time of diplomatic officers is taken up in attending to the wants of their fellow countrymen. They may want to be presented at court, obtain admission to places of interest, have obstacles of local regulations to their marriages smoothed away, have their lineage traced back to royal ancestry, have collected for them fabulous fortunes to which they think they have fallen heir, and various other things involving a tremendous draft on the time and energies of the diplomatic officer. Although these are no part of the official duty of the representative, he is expected to pay such attention to them as practicable; and if he fails to do so, he

is liable to be subjected to criticism in his own country. General Horace Porter, ex-ambassador to France, tells this story: "There is an impression among some of our travellers abroad that the government owns the embassies and legations, and that such persons as taxpayers are part owners, and they frequently look upon a building that the representative has rented individually, as 'our embassy,' and speak as though it belonged to the visitors, and they could take unrestricted liberties with it. A letter from Rome was once received by me at the embassy in Paris from an American lady, a stranger, saying: 'I expect to go to Paris next week, and am sending on nine of my trunks to *our* embassy, knowing you will not mind keeping them for me till I arrive, and besides, this may facilitate getting them through the custom-house without paying duty.' I had word sent to her at once, intimating as politely as possible that the embassy was not a safe-deposit vault nor a storage warehouse, and that I could not be a party to any arrangement, however convenient, for depriving the French Republic of any portion of its revenue from customs."

Character of American Diplomacy.

Washington, through an instruction issued by his Secretary of State to John Jay, Special Minister to Great Britain, in 1794, established a high standard of conduct for our diplomacy. The instruction reads: "It is the President's wish that the characteristics of an American minister should be marked on the one hand by a firmness against improper compliances, and on the other by sincerity, candor, truth and prudence, and by a horror of finesse and chicane."

This high standard has since been almost invariably maintained by American diplomatists. Because of the direct and open methods of American diplomatic dealing, our diplomacy has sometimes been rather contemptuously termed "shirt-sleeve" diplomacy.

The late distinguished Secretary of State John Hay, in a public address in 1902, declaring the Monroe Doctrine and the Golden Rule to be the rule of our conduct in diplomacy, said: "There was a time when diplomacy was a science of intrigue and falsehood, of traps and mines and countermines. In the last generation it was thought a remarkable advance in straightforward diplomacy when Prince Bismarck recognized the advantage of telling the truth even at the risk of misleading his adversary. . . . I really believe the world has moved forward in diplomacy as in other matters. In my experience of diplomatic life, which now covers more years than I like to look back upon, and, in the far greater record of American diplomacy which I have read and studied, I can say without hesitation that we have generally told squarely what we wanted, announced early in the negotiation what we were willing to give, and allowed the other side to accept or reject our terms. During the time in which I have been prominently concerned in our foreign relations, I can also say that we have been met by the representatives of other powers in the same spirit of frankness and sincerity."

Francis Wharton, LL.D.,D.D.

Lawyer, Publicist, Editor, Professor, Author, and Clergyman

BY THE EDITOR

[In preparing this sketch, the writer has largely availed himself of the interesting material contained in the Memoir of Dr. Wharton, compiled by his wife for private circulation, a copy of which was kindly furnished by his daughter, Mrs. John C. Poor, of Cambridge, Mass.—Ed.]

HERE was a remarkable man, whose ample life touched the duties and realities of existence at many points. He labored in the fields of law, theology, literature, history, philosophy, and pedagogy, and enriched each by his ripe scholarship. As a practising lawyer he won an enviable position at the bar; as a legal writer he prepared a series of voluminous treatises that rank among the classics of the profession; as a publicist he prepared works of international reputation, and was, at the time of his death, legal adviser to the Department of State; as a professor he lectured on topics pertaining to law, theology, and belles lettres; as a clergyman he ministered for several years to the spiritual needs of a parish; as an editor he conducted for some time a religious journal. He was also a frequent contributor to magazines and periodicals. Love of learning, untiring industry, intense enthusiasm, deep piety, and a natural vivacity of mind were the hidden springs from which he drew the amazing energy which alone sufficed for these things.

FRANCIS WHARTON

It is mainly as a legal writer that we shall speak of him, but to properly depict him as such it is necessary to tell something of the story of his life, and to show by what unremitting labors, amidst the press of manifold occupations, he attained an intellectual culture such as is rarely found outside of the cloisters and universities of the older centers of learning across the sea.

It has been well said that it is often the fate of writers who contribute in no small degree to mold opinion to be little known except in their books. The life of an industrious writer of treatises on law is necessarily spent more or less in seclusion. He must have time not only for thought, but also for research. Unlike the author of descriptions of life and manners, who acquires his knowledge by contact with men, the writer on law must glean the books for his materials. His writings have little circulation among the mass of the people, and his labors do not reach the popular imagination; hence his personality is generally little inquired about and little known. Dr. Wharton, in large measure, escaped this fate.

His Ancestry

The Whartons had for several generations been Quakers; but Thomas I. Wharton, the father of the subject of this sketch, necessarily left the Society of Friends when he served as captain of infantry in the War of 1812. After the war he became an eminent member of the Philadelphia bar, and, in addition to his strictly professional labors, was the author of the first edition of Wharton's Digest and of the six volumes of Wharton's Reports. He married Arabella, second daughter of Mr. John Griffith, a merchant of Philadelphia, son of the attorney general of

New Jersey, of the same name, and brother of Judge William Griffith, a judge of the circuit court of the United States, and author of several law treatises. The father was a diligent student, distinguished for his literary taste and skill. He possessed great natural sagacity, a strong sense of humor, and unbounded honesty. He was known as strictly, sometimes severely, just.

His Early Years.

Francis Wharton was born on March 7th, 1820, in an old Philadelphia mansion fronting on Walnut street and directly opposite to Independence Square.

He was a singularly precocious child, full of life and brightness, and with a talent for mischief, that he often recalled in later days. "Once," he said, "while all the family were at church, I took a plaster bust of some dignitary of the law from my father's library, and finding it hollow inside, conceived the idea of supporting it on a broomstick, and exhibiting it at the parlor window. Here, as the good people returned from church (from old St. Peter's and St. James') they were edified by the sight of Blackstone or Coke dancing violently up and down, and showing a vivacity as a ghost that he certainly never manifested in life."

An aged lady, a friend of his mother's, related how upon a visit to the house the door opened, and a small light-haired child of nine or ten years old came in, carrying a load of books in his arms. "Well, Frank, what have you been reading?" said his mother. "Well, mother, I have just finished all these books, and the one I like best is 'Watts on the Mind,'" was the astounding reply. That a child so young should be attracted at all by a treatise such as that of Watts is only to be accounted for in the same way that we account for the fact that Mozart read difficult music at the same age, and Goethe composed poems and plays.

At the age of seventeen he entered Yale College, and graduated in 1839. Of his college days but few records remain.

Admission to Bar.

At the age of nineteen he returned to Philadelphia and became a law student in his father's office. His impulse was to enter the ministry, but from that he was dissuaded by his father, who with wiser, though more worldly judgment, thought his gifts not adapted to a profession requiring the constant use of his voice. His physique was never robust, and there was a decided weakness of the vocal organs, which caused him annoyance all his life, and was finally one among the several causes of his death.

The admission of Dr. Wharton to the bar in Philadelphia in 1843 begins a new phase of his career. Though but twenty-three years old, he was amply equipped with legal knowledge, and soon found himself with occupation on his hands. There is no need to explain his rapid success beyond the ever apparent and conspicuous popularity of his manner and the sagacity and effectiveness of the counsel he gave. The last five years of the ten he spent as a practising lawyer in Philadelphia were crowned by unusual and lucrative remuneration. Still his forte always lay in writing. His articles for magazines and criticisms of books were eagerly received by publishers. There was a clearness and point about his style, a vigor and life about his expressions, that made him interesting to those who knew very little about the technicalities of the subjects he treated.

Assistant Attorney General.

He was in early life an active Democratic politician, and received an appointment as assistant attorney general. Knowing that his voice was not strong enough for the strain of continuous speaking, he agreed with his fellow assistant, Judge William D. Kelley, that he would prepare the pleadings, and that the latter should attend to the court business generally. This arrangement probably directed his mind to the absence of any good book on Pleading and Practice in the United States, and led to the preparation of the first elaborate treatise which brought him fame as a legal writer.

Marriage.

In November, 1852, he married Miss Sydney Paul, a daughter of Comegys Paul, Esq., of Philadelphia. In this lady he found a most congenial companion. Her death, which took place in September, 1854, seemed to cut him loose from all the ties by which he had surrounded himself. For a time he tried to find solace in the occupations of his former life. He even sought new channels of usefulness. He became a sort of lay preacher in the various missions of the city. At length he found that, after the great loss he had sustained, he could not longer live among the memorials of his past happiness.

Life at Kenyon College.

During a tour of the West in 1856, Dr. Wharton visited Kenyon College, at Gambier, Ohio. Here he met with a warm welcome, and became really enamored of the life and surroundings of the place. He was induced to accept the Professorship of English History and Literature, including Logic and Rhetoric, and Lectures on Constitutional Law, and threw himself zealously into the work.

At Gambier he became again the charm of every social circle, and his generous nature poured itself out in loving prodigality on all who came near him. In the class room he delighted to use the knowledge he had gained, and the rich gift of his influence, to shape and mould the material committed to his charge.

His labors at Gambier were interrupted by a trip to Europe in 1859, which was rendered necessary by a failure of health and some slight throat trouble. Shortly after his return from Europe he became engaged to a daughter of Lewis R. Ashhurst, Esq., of Philadelphia, and was married on December 27th of the same year,—1860.

Pastorate at Brookline.

After a year of special preparation Dr. Wharton had been ordained deacon at Cleveland, in 1862, and a month later received priest's orders of that church, to which he now devoted himself with a new and heartfelt consecration. In 1863 he was called to the parish of St. Paul's, Brookline, Massachusetts. After six years of successful and delightful labor there, Dr. Wharton's throat began again to trouble him, and he undertook a second trip to Europe.

At this point we may, perhaps, date the revival of his interest in legal matters. He had, indeed, from time to time continued to revise and print new editions of his "Criminal Law," as they were called for, and the research connected with this work called his attention to the absence of good books on several other points. While he was abroad in 1870, he spent six months in Dresden. Here, in enforced leisure, and with the command of good authorities on the subject, he completed his work on "Conflict of Laws," which was published on his return to this country.

Professor at Cambridge.

Upon Dr. Wharton's return to Brookline, finding his throat still troubling him, he resolved to resign his parish and accept a professorship in the Seminary of the Episcopal Church in Cambridge.

Of his life in Cambridge, if we can say, with Luther, "to labor is to pray," it was a most devout one. His lectures at the Seminary were on Ecclesiastical Polity and Canon Law, but he made them include much beside. He accepted also a chair in the Boston University, to lecture on Conflict of Laws. His year abroad had given such an impetus to his legal studies, and the libraries of Cambridge so facilitated this impulse, that he continued to write and publish from time to time the various treatises that have made his name famous.

The twelve years spent in Cambridge were indeed fruitful. It must, however, be remembered that incessant work was the rule of Dr. Wharton's life. His very recreation was only a new form of work, and he was so thoroughly master of the themes upon which he lectured and wrote that they gave him little trouble. It was his delight to take home each evening a mass of miscellaneous literature, over which he pored till late at night. His brain could not rest except by changing its subject, and his faculties seemed to brighten and expand with the burdens laid upon them. He

was always pushing his inquiries as a lawyer into new and unoccupied regions. As he surveyed the opportunities which opened up their attractions to his vision, he often remarked that young lawyers would do well to cultivate what he called the literature of the law.

After twelve years of constantly increasing labor in Cambridge and Boston, Dr. Wharton's health began to show signs of breaking down. In the year 1881 he resolved to give up his professorships, and confine himself entirely to his books and the research they demanded. He decided to return to his native city of Philadelphia, where he took up his residence in 1882.

Examiner of Claims.

The return of the Democratic party to power in 1884 marked the next era in his changing career. He had spent nearly two years quietly in Philadelphia, fully occupied with revising his numerous books, and had no idea that anything further awaited him, when he was offered and accepted the position of Examiner of Claims, or, in other words, Legal Adviser to the State Department. His nomination was unanimously confirmed by the senate, one of its members remarking: "I should as soon think of objecting to Chief Justice Marshall."

The labors of Dr. Wharton in history and jurisprudence, and his fondness for the discussion of general principles, had led him to the study of international law, and prepared the way for his eminence as a publicist. His first important achievement in this field is found in his treatise on the "Conflict of Laws or Private International Law," which includes a comparative view of Anglo-American, Roman, German, and French Jurisprudence.

In 1885 appeared his "Commentaries on Law," which embrace chapters on International Law, both public and private.

Such was the ample preparation of Dr. Wharton for the discharge of his new duties, upon which he entered with all his accustomed energy and enthusiasm.

Digest of International Law.

Before the close of his first year in the Department of State, Dr. Wharton began the compilation of a digest of the opinions and decisions of executive and judicial officers of the United States on questions of International Law, with legal and historical notes. The work being too large and scarcely popular enough in character to be undertaken by a private publisher, its printing was provided for by a resolution of Congress. An intelligent critic has observed that if Dr. Wharton had done nothing else, during his industrious life, for the science of jurisprudence, the "International Digest" would, quite apart from his labors in the field of criminal law and of the conflict of laws, be his enduring monument.

After the publication of this work, Dr. Wharton undertook the labor of editing the "Diplomatic Correspondence of the American Revolution." Provision for printing was made by Congress, and he worked at his new task incessantly up to the time of his last illness.

His Writings.

His first reputation as a legal author was made by his writings on criminal law. His works on this subject are four in number, and comprise treatises on "Criminal Law," "Criminal Pleading and Practice," "Criminal Evidence," and "Precedents of Indictments and Pleas." In conjunction with Dr. Stillé, he wrote a work on "Medical Jurisprudence." He next prepared a commentary on "Agency and Agents;" then a treatise on the "Law of Negligence." Following these came his work on the "Conflict of Laws;" a commentary on the "Law of Evidence;" a work on "Contracts," and "Commentaries on American Law." Besides these practical treatises he published a volume of "State Trials," a work full of historical interest, with notes written in a peculiarly charming style, which appeared in 1849. His latest works, as we have seen, were the "International Law Digest" and the "Diplomatic Correspondence of the Revolution."

It was in his treatise on the "Conflict of Laws, or Private International Law,"

that he attempted to cover the widest field of legal investigation. If his acquirements had been wanting either in thoroughness or in amplitude, the defect would then have been revealed. But none of his works was ever received with more instant recognition or with higher approval, not only by the public, but also by scholars and jurists. It did more than any other of his publications to extend his reputation abroad, and no doubt materially contributed to form that high estimate of his learning and abilities which induced the University of Edinburgh to confer upon him the degree of Doctor of Laws, and the Institute of International Law to enroll him as one of its members.

Literary Ability and Style.

"Dr. Wharton," wrote Hon. John Bassett Moore, "possessed powers of imagination of a high order. It is this that distinguishes the narrow logician from the creative thinker. Voltaire said of Dr. Clark, that he was a mere reasoning machine. This could never have been said of Dr. Wharton. He did not, indeed, possess that highest type of imagination which has enabled a few men in different ages to create distinctive systems of thought, and to connect their names with new social, political, or legal theories. He made no profession of originality in this rare sense. He was always ready to avow his obligations to others, and was wont to disclaim any originality of thought. He declared himself to be especially indebted to German writers, whose language he understood and whose works he carefully studied. But he was never the victim of logic. He sought to discover and apply principles, and not merely to find reasons to justify other men's conclusions. He studied and comprehended questions in their wider relations, and not singly and apart. He was especially quick to perceive analogies, and reasoned much in that way. This imparted to his discussion of various topics unusual breadth and suggestiveness, and exceptional harmoniousness of view.

"It is a distinctive feature of Dr. Wharton's books that, in addition to their convenience and authority as works of reference, they possess a peculiar literary charm. This is due in large measure to the freshness of his thought and the force and vivacity of his forms of expression. His tendency was to be diffuse, rather than concise. He wrote with such facility, and could so easily command words in which to convey his thoughts, that he was little given to condensation; but with all the learning which his works display he never gives the reader the impression that his erudition was a burden to him. . . .

"Another and constant quality of Dr. Wharton's style is the subdivision of his argument into separate parts, each one of which is pursued and exhausted by itself. This analytical method of statement imparted clearness as well as a certain didactic quality to his style. It was by the employment of a multitude of reasons, rather than by the selection and repetition of a single and overwhelming argument, that he sought to establish his proposition."

Illness and Death.

Early in 1889 his physical powers began perceptibly to fail. The affection of the throat which had long troubled him assumed an aggravated form. About the middle of February his symptoms became more unfavorable. Late at night on the 20th he made the first confession of physical weakness which he uttered during his illness. He asked for nourishment, and expressed a desire for repose. Then in brief sentences written on slips of paper—for he could not speak—he bade good night to those who were watching by his bedside, and begged them to retire to rest. Soon after midnight, as he lay apparently asleep, he was observed to turn his head. He gave no sign of anguish, but at that moment he ceased to breathe.

"Indeed, this good man," wrote Bishop Leonard, "who bore the mark of the priest and prophet on his heart, while he carried the lamp of truth in his hand, fulfilled the outline of the Roman Cicero when he said, 'I speak of that learning which makes us acquainted with the boundless extent of nature and the universe, and which, even while we remain in this world, discovers to us both heaven, and earth, and sea.'"

The Right of Asylum

BY ROBERT A. EDGAR,
Of the New York Bar

THE use of particular places as asylums where those accused of crime could find refuge from the pursuing avenger of blood is very ancient. It arose at a time when stable governments had not yet been formed and regular judicial machinery established, when the right of private vengeance existed; when the rule was "an eye for an eye and a tooth for a tooth," when the law was that "whoso sheddeth man's blood, by man shall his blood be shed," when the slayer was pursued by a son or other relative of the slain man, and, if overtaken, summarily killed. It is not strange, therefore, that sentiments of justice, humanity, and religion prompted men to seek some means to save the offender from indiscriminating vengeance. Pursued by the avenger, the hunted transgressor fled to some shrine, temple, church, or other sanctuary, and there as a refugee and suppliant sought protection. Owing to its sacred character, it was considered an act of sacrilege and impiety worthy of death to kill him there or to drag him thence. Here he obtained, if not a pardon for his offense and a remission of his sins, at least an opportunity to have his guilt inquired into, and to have the benefit of mitigating circumstances. Such sanctuaries existed in Egypt, Greece, Palestine, and other Eastern and European countries. By the Levitical law six cities were set aside as cities of refuge. "These six cities shall be a refuge, both for the children of Israel and for the stranger and for the sojourner among them: that every one that killeth any person unawares may flee thither." [1]

As superstition declined and the administration of justice became more regular, the use of these sanctuaries as asylums ceased. The idea, however, that the fugitive had a right to an asylum, did not at once die out, and each country came to be regarded as an asylum for offenders against the laws of other countries.

But as the administration of justice in the different countries improved, as intercourse increased, and ignorance and prejudice regarding each other diminished, the notion that the fugitive had a right to refuge and protection disappeared, and in its place was substituted the right to expel or extradite any refugee from another country. An asylum, therefore, is not, strictly speaking, a right of the fugitive, but is a privilege which the country to which he has fled can either grant or refuse. It follows as a necessary consequence from the unrestricted sovereignty which every nation possesses over its own territory.

Extradition from Territory of Foreign Country.

It may be said that, by the great weight of authority, no nation is bound, in the absence of treaty obligation, to deliver up a fugitive offender to the nation whose laws are violated. The Supreme Court of the United States, speaking by Mr. Justice Miller, in the case of United States v. Rauscher, 119 U. S. 407, 30 L. ed. 425, 7 Sup. Ct. Rep. 234, 6 Am. Crim. Rep. 222, said: "It is only in modern times that the nations of the earth have imposed upon themselves the obligation of delivering up these fugitives from justice to the states where their crimes were committed, for trial and punishment. This has been done generally by treaties made by one independent government with another. Prior to these treaties and apart from them it may be stated as the general result of the writers upon international law that there was no well-defined obligation on one country to deliver up such fugitives to another, and though such delivery was often made, it was upon the principle of comity, and within the discretion of the government whose action was invoked; and it has never been rec-

[1] Numbers, 35: 15.

ognized as among those obligations of one government towards another which rest upon established principles of international law."

Similar views were expressed by Chief Justice Tilghman, of Pennsylvania, in Com. ex rel. Short v. Deacon, 10 Serg. & R. 125: "The more deeply the subject is considered the more sensibly shall we feel its difficulties; so that, upon the whole, the safest principle seems to be that no state has an absolute and perfect right to demand of another the delivery of a fugitive criminal, though it has what is called an imperfect right, that is, a right to ask it, as a matter of courtesy, good will, and mutual convenience. But a refusal to grant such request is no just cause of war." Other judicial authorities in this country are to the same effect.[2] The only important exception is that of Chancellor Kent.[3]

The principle has been acted upon by the various American Secretaries of State in their dealings with foreign nations. Thus Mr. Rush, when Secretary of State, in his note to Mr. Hyde de Neuville, April 9, 1817, said: "The laws of nations embrace no provision for the surrender of persons who are fugitives from the offended laws of one country to the territory of another. It is only by treaty that such surrender can take place." Similar statements were made by President Jefferson, Mr. Webster, and President Buchanan when Secretaries of State.

But although, in the absence of treaty, one nation is not bound to deliver up fugitives to another, there is no principle of international law to prevent its doing so of its own accord as a matter of comity or courtesy. And this has been done on numerous occasions. Thus Spain surrendered Tweed to the United States in 1876, before the conclusion of an extradition treaty between the two countries, and Morocco surrendered Stensland, the defaulting Chicago banker.

The existence of a treaty which provides for extradition for certain crimes does not deprive either nation of the power and right to exercise its own discretion in cases not coming within the terms of the treaty.[4]

The laws of some countries, however, including the United States and Great Britain, give no authority for the surrender of fugitives in the absence of treaty.[5] This country has, on numerous occasions, declined to surrender fugitives, on the ground of lack of power. Thus, Mr. Gresham, when Secretary of State, in a note to the Portugese minister on June 5, 1895, said: "In the absence of a treaty or an act of Congress authorizing it, the President has no authority to cause the arrest and extradition to another country of an alleged criminal found within the jurisdiction of the United States."[6]

Because of its lack of power to reciprocate, the United States has, with a few exceptions, carefully refrained from requesting surrender of criminals from countries with which it has no extradition treaty; and, on the few occasions when it did make the request, was careful to explain that it had no power to grant similar courtesies. Thus, Mr. Fish, Secretary of State, in his instructions to Mr. Adee, charge d'affairs November 3, 1876, referring to Spain's surrender of Tweed in that year before the conclusion of the extradition treaty between the two countries, said: "The United States has from time to time carefully avoided making requests for the surrender of criminals, for the reason, among others, that it might not be possible to reciprocate on such a matter. The government of Spain, in its action in this case, has appreciated the peculiarity of the case."[7] In 1896, Mr. Olney, premising that the government of the United States could not, in the absence of treaty, surrender a fugitive

[2] Holmes v. Jennison, 14 Pet. 540, 10 L. ed. 579; Com. v. Green, 17 Mass. 548.

[3] Re Washburn, 4 Johns. Ch. 106, 8 Am. Dec. 548.

[4] Ex parte Foss, 102 Cal. 347, 25 L.R.A. 593, 41 Am. St. Rep. 182, 36 Pac. 669, 9 Am. Crim. Rep. 303.

[5] United States v. Davis, 2 Sumn. 482, Fed. Cas. No. 14,932 (semble); Com. ex rel. Short v. Deacon, 10 Serg. & R. 125; Terlinden v. Ames, 184 U. S. 270, 46 L. ed. 534, 22 Sup. Ct. Rep. 484, 12 Am. Crim. Rep. 424.

[6] Quoted in 4 Moore's International Law Digest, 252.

[7] Quoted in 4 Moore's International Law Digest, 255.

from justice, and therefore could not promise reciprocity, stated that, upon the requisition of the governor of Massachusetts, the Department of State would "make the attempt" to obtain the surrender of a fugitive criminal from Venezuela "as an act of courtesy." [8]

The United States has, however, on several occasions, recovered fugitives from other countries with which no extradition treaties existed, because they had been surrendered as an act of courtesy.

Extradition treaties covering the most important crimes have been negotiated with most of the civilized nations of the earth.

Although there was some doubt about the matter at first, it may now be taken as settled doctrine that the surrender of a fugitive cannot be made by a state, but is a national act, and can only be done by the United States or by its orders.[9] The United States may, however, by treaty or statute, confer such authority upon state officials; and in the extradition treaty with Mexico of December 11, 1861, a limited authority was conferred upon certain state officials in the border states.

Asylum in Legations.

In order to secure the independence of ambassadors in the discharge of their functions, the ambassador, his family, and suite are exempt from the operation of local law. This exemption is called extra-territoriality, the ambassador being considered, by a fiction of law, as beyond the territory and jurisdiction of the country to which he is accredited. In order to secure his person from insult and his papers from search, the house in which he lives enjoys great immunity, and is inaccessible to the ordinary officers of justice. This immunity is known as the inviolability of the diplomatic hotel or residence. "If it can be rightly entered at all without the consent of its occupant, it can only be so entered in consequence of an order emanating from the supreme authority of the country in which the minister resides, and for which it will be held responsible by his government." [10] It is not strange, therefore, that with the abolition of sanctuaries and cities of refuge, that many persons who were wanted for ordinary or political offenses sought refuge in the houses of foreign ministers. In early times most exaggerated claims were made by ambassadors as to the extent of their privileges and immunities. In some cities, notably Rome, Madrid, and Venice, these included what is known as the freedom of the quarter (*franchise des quartiers*) by which not only the minister's house, but the quarter or ward of the city in which he lived, enjoyed an immunity from local law. In consequence of the gross abuses of this privilege by reason of criminals and scalawags of all kinds resorting thither to the detriment of the good order of the city and state, Pope Innocent XI. announced that thereafter he would not receive any ambassador at Rome who would not relinquish the privilege. All did so with the exception of Louis XIV., King of France, who, when the example of his brethren was pointed out to him as one reason why he should also give up the privilege, replied with his accustomed arrogance that his Crown should never be ruled by the example of others; that God had established it as an example and guide to others, and that he had resolved, so long as he reigned, never to let it be deprived of any of its rights. An armed conflict ensued before the matter was finally compromised. In one instance inviolability was claimed and tacitly allowed for the French ambassador's coach in which he was transporting some refugees from the legation in Rome to the sea.

Because they had been grossly abused, these extended privileges were gradually curtailed. One case will be cited to mark the decline. In 1726, the Duke of Ripperda, minister of finance and foreign affairs to Philip V. of Spain, being apprehensive concerning his safety,

[8] 4 Moore's International Law Digest, 257.

[9] United States v. Rauscher, 119 U. S. 407, 414, 30 L. ed. 425, 427, 7 Sup. Ct. Rep. 234, 6 Am. Crim. Rep. 222; People ex rel. Barlow v. Curtis, 50 N. Y. 321, 10 Am. Rep. 483; People ex rel. Gardiner v. Columbia County, 134 N. Y. 9, 31 N. E. 322; Ex parte Holmes, 12 Vt. 631.

[10] Mr. Buchanan, Secretary of State, to Mr. Shields, March 22, 1848. M. S. S. Inst. Venez.

sought refuge, uninvited, in the house of the British ambassador, though no charges were then pending against him. With the consent of the Spanish government he was allowed to remain for a time. But on discovering that he had abstracted important state papers the government sought advice from the Council of Castile whether he could be seized. The latter replied that it would "operate to the subversion and utter ruin [of sovereigns] if persons who had been intrusted with the finances, the powers and the secrets of the state, were, when guilty of violating the duties of their office, allowed to take shelter under a privilege which had been granted to the house of ambassadors in favor of only ordinary offenders." He was accordingly seized. The English foreign minister, in protesting, did so on the ground that, under the circumstances, an opportunity should have been given for the peaceable surrender of Ripperda, but without expressing any opinion as to whether or not the ambassador had a right to protect him. The action of the Spanish authorities on this occasion has met the approval of most writers on international law.

Formerly the right of asylum was granted only in case of common criminals, and not in the case of political offenders. But later the situation was reversed, and asylum is now never granted in case of ordinary criminals but only in case of political offenders when it is granted at all. As Bynkershock pertinently asked: "Are ambassadors sent to harbor thieves?" It is seldom, if ever, granted except in case of great civil disturbance. Calvo said that "in the midst of civil disturbances" a minister's dwelling can and ought to offer an assured refuge "to political persons whom danger to life forces on the moment to take refuge there." But he also lays down the following limitations to inviolability of a minister's house. "The dwelling of a public minister is inviolable, in so far as it affects things indispensable to his official service and to the free and regular exercise of his functions; but whenever the conduct or the imprudent attitude of a diplomatic agent puts in peril the peace of the state, violates or tends to elude the laws of the country, by converting, for example, the legation into a refuge for criminals or into a habitation of conspiracy against the established government, the privilege of inviolability of domicil disappears, and the offended state is fully warranted in refusing to the dwelling of the agent the benefit of an immunity which reason and justice cease to sustain." [11]

The position which this country has taken on the question of asylum is well illustrated in a letter from Mr. Seward, when Secretary of State, to Mr. Hovey, minister to Peru, February 25, 1867, at a time of great political excitement in that country: "I observe that . . . you have taken these positions, *viz.*, that Peru is entitled to all the rights and privileges of a Christian nation, and as such should be placed precisely in the position of the United States, France, England, and other Christian countries, and that the doctrine of asylum cannot be properly claimed or enforced in Peru, unless it be in exceptional cases recognized by the universal law of nations; that as soon as a legal charge of crime is made, whether political or not, you hold it to be the duty of the minister in whose legation an offending party has taken refuge to leave him without interference to the authorities demanding his arrest. Again, that you claim no diplomatic power or right in Peru that your government does not accord to the representative of Peru at Washington. These positions are altogether approved." [12]

In October 5, 1875, Mr. Fish, Secretary of State, writing to Mr. Cushing, minister to Spain, spoke as follows of the practice of revolutionists resorting to the legations for refuge: "The frequency of resort in Spain to the legations for refuge, and the fact mentioned by you that nobody there disputes the claim of asylum, but that it has become, as it were, the common law of the land, may be accounted for by the prevalence of 'conspiracy as a means of changing a cabinet or a government,' and the continued tolerance of the usage is

[11] Droit International, 4th ed. § 1521.
[12] Dip. Cor. 1867, II. 763, 764.

an encouragement of this tendency to conspiracy.

"It is an annoyance and embarrassment, probably, to the ministers whose legations are thus used, but certainly to the governments of those ministers, and, as facilitating and encouraging chronic conspiracy and rebellion, it is wrong to the government and to the people where it is practised,—a wrong to the people, even though the ministry of the time may not remonstrate, looking to the possibility of finding a convenient shelter when their own day of reckoning and of flight may come." [13]

The United States has, however, on several occasions, countenanced the use of its legations as a temporary refuge to persons fleeing from mob violence until order could be established, and in the interregnum between the overturning of one government and the establishing of another. This has been particularly the case at Hayti, where rebellions and revolutions had become so common as almost to have become the normal condition of affairs.

Other nations have been very free in granting protection to members of the unsuccessful parties in the numerous revolutions which have occurred in South America. In the United States the supremacy of the local law has been so rigorously maintained that the right of asylum has never existed, though the right has probably been claimed and granted in every other independent country in America. In 1794, Bradford, Attorney General, rendered an opinion that the house of a foreign minister could not be made an asylum for a guilty, nor, it was apprehended, a prison for an innocent one; and that although the minister's house be exempt from the ordinary jurisdiction of the country, yet, in such case, "recourse would be had to the interposition of the extraordinary powers of the state." [14]

Right of Asylum in Consulates.

In the absence of treaty, consuls have no diplomatic character, and their houses are not entitled to the immunities granted to diplomatic agents. Hence, there is no right of asylum in consulates. Mr. Marcy, when Secretary of State, in instructing Mr. Clay, minister to Peru, January 24, 1854, said: "Neither the law of nations nor the stipulations of our treaty with Peru, recognizes the right of consuls to afford protection to those who have rendered themselves obnoxious to the authority of the government under which they dwell." [15]

By treaty, however, consuls have been given considerable judicial and diplomatic powers in certain barbarous and non-Christian nations; and the grant of such powers has generally been considered as endowing the consulate with extraterritoriality. By treaty with some Christian nations, consulates have been made inviolable, but with the proviso that they shall not be used as asylums.

Asylum on Ships of War.

A man-of-war or other public vessel of a country when on the high seas is under the absolute jurisdiction of the country whose flag it flies. By a fiction of law it is regarded as a detached and floating part of its territory; and even when within the territorial bounds of a friendly country, it is for most purposes exempt from its jurisdiction. The Supreme Court of the United States, by Marshall, Ch. J., held that a warship of a foreign sovereign at peace with the United States coming into its ports is exempt from the jurisdiction of the country. The court held that "the implied license, therefore, under which such vessel enters a friendly port may reasonably be construed, and it seems to the court, ought to be construed, as containing an exemption from the jurisdiction of the sovereign within whose territory she claims the rights of hospitality." [16] Similar views were expressed by Cushing when attorney gen-

[13] M. S. Inst. Spain XVII. 317, quoted in 2 Moore's International Law Digest, 771.

[14] 1 Ops. Atty. Gen. 47, 48.

[15] M. S. Inst. Peru, XV. 126, quoted from 2 Moore's International Law Digest, 833. See to like effect, Mr. Fish, Secretary of State to Mr. Bassett, minister to Hayti, December 16, 1869, For. Rel. 1871, 695; and Mr. Gresham, Secretary of State, to Mr. Terrell, minister to Turkey, July 11, 1894, For. Rel. 733, 736.

[16] The Exchange v. M'Faddon, 7 Cranch, 144, 3 L. ed. 296.

eral.[17] Story, J., thought that the exemption "stands upon principles of public comity and convenience, and arises from the presumed consent or license of nations, that foreign public ships coming into their ports, and demeaning themselves according to law, and in a friendly manner, shall be exempt from the local jurisdiction."[18] But a man-of-war or public vessel, when within the ports of another country and enjoying its hospitality, must refrain from any acts which imperil its peace and good order. It should not bring into the country conspirators bent on civil strife, nor should it harbor criminals or other nonpolitical offenders. Custom, however, seems to sanction the right of a man-of-war to take on board a political refugee who appears uninvited at the side of a vessel and asks protection; and the country within whose territory the vessel is has no right to demand that such refugee be surrendered, or that the vessel be expelled because of a refusal to surrender. The only remedy for refusal to surrender, either a common criminal or a political offender, is by direct representation to the country to which the vessel belongs through the ordinary diplomatic channels; except, perhaps, expulsion would be justified if the vessel were being made a center of conspiracy dangerous to the state.

During the disorders in Naples in 1849, Lord Palmerston said that while it "would not be right to receive and harbor on board of a British ship-of-war any person flying from justice on a criminal charge, or who was escaping from the sentence of a court of law," yet a British man-of-war had always been regarded as a safe place of refuge for persons fleeing "from persecution on account of their political conduct or opinions," whether the refugee "was escaping from the arbitrary acts of a monarchial government or from the lawless violence of a revolutionary committee."[19]

While this country has occasionally, from motives of humanity, granted refuge on board its public vessels to political offenders, yet it has always done so sparingly so as not to encourage rebellion. On August 15, 1894, the Secretary of the Navy issued the following regulation on the subject of asylum: "The right of asylum for political or other refugees has no foundation in international law. In countries, however, where frequent insurrections occur, and constant instability of government exists, local usage sanctions the granting of asylum, but even in the waters of such countries officers should refuse all applications for asylum except when requested by the interests of humanity in extreme or exceptional cases, such as the pursuit of a refugee by a mob. Officers must not directly or indirectly invite refugees to accept asylum."

Asylum on Merchant Ships.

As a general rule merchant ships are not exempt from the territorial jurisdiction of the country whose waters they enter. They cannot, therefore, grant asylum. This doctrine was recognized in the diplomatic correspondence in the case of Sotelo. In 1840, the French vessel L'Ocean, when making its regular voyage from Marseilles along the coast of Spain to Gibraltar, when at Valencia, took on board one Sotelo, a Spanish exminister under prosecution for a political offense, without the knowledge of the Spanish authorities. On entering the harbor of Alicante, Sotelo was taken off the vessel by the Spanish authorities in spite of the protests of the captain, who invoked both the doctrine of asylum and of extraterritoriality.

The country has not admitted the right of asylum on merchant vessels or other private ships. Thus, Mr. Buchanan, when Secretary of State, said that "in case an American citizen charged with a crime in the city of New York should seek an asylum in a British merchant vessel, our authorities, I presume, would not hesitate to arrest him on board of such vessel whilst she remained within waters under our exclusive and absolute jurisdiction. In such a case the flag of Great Britain would afford no protec-

[17] 7 Ops. Atty. Gen. 177.

[18] The Santissima Trinidad, 7 Wheat. 283, 353, 5 L. ed. 454, 471.

[19] 50 Br. and For. State Papers, 803, and 2 Moore's International Law Digest, 849.

tion against the process of the law." [20]

As to offenses committed on board a merchant vessel, the rule is thus stated in the Wildenhus Case: "The principle which governs the whole matter is this: Disorders which disturb only the peace of the ship or those on board are to be dealt with exclusively by the sovereignty of the home of the ship, but those which disturb the public peace may be suppressed, and, if need be, the offenders punished by the proper authorities of the local jurisdiction. It may not be easy at all times to determine to which of the two jurisdictions a particular act of disorder belongs. Much will undoubtedly depend on the attending circumstances of the particular case, but all must concede that felonious homicide is a subject for the local jurisdiction, and that if the proper authorities are proceeding with the case in a regular way the consul has no right to interfere to prevent it." [21]

Passengers in Transit.

On March 20, 1844, Lord Aberdeen gave an opinion for the benefit of the Secretary of the Admiralty, that if a British vessel plying between Lisbon, Portugal, and England should stop at a Spanish port *en route*, that the Spanish authorities would have a right to take off a Spanish subject who had embarked at Lisbon for England. A similar ruling was made in the case of Gamez, a political fugitive, by Secretary Bayard in instructing Mr. Hall, minister to Central America, March 12, 1885; [22] and though a contrary ruling was made by Secretary Blaine in the case of Barrundia,[23] it has been the subject of some criticism.[24]

[20] Mr. Buchanan, Secretary of State, to Mr. Jordan, January 23, 1849, 37 M. S. Dom. Let. 98, quoted from 2 Moore's International Law Digest, 856.

[21] Wildenhus's Case (Mali v. Keeper of Common Jail) 120 U. S. 18, 30 L. ed. 569, 7 Sup. Ct. Rep. 385.

[22] M. S. Inst. Cent. Am. XVIII. 488.

[23] Mr. Blaine to Mr. Mizner, minister to Central America, November 18, 1890, For. Rel. 1890, 123, 136–141.

[24] Taylor, International Law, p. 314.

The Hague Tribunal is based on the idea of justice, and not of force, as the governing idea. Weak nations are to have their rights administered by the same rules and upon the same principles as powerful nations. The existence of the Hague Tribunal necessarily implies that it will have a lex non scripta of its own, which will be in general conformity to the principles of the common law and the golden rule.—T. B. Edgington.

Grotius, and the Movement for International Peace

BY R. WALTON MOORE,
President of the Virginia Bar Association, 1910.

THAT Hugo Grotius filled a very large space in the eye of his contemporaries is beyond question. Those of his own and succeeding generations best qualified to judge are almost unanimous in ranking him as one of the foremost characters of modern history. But it seems to be beyond question also that, with the lapse of time, he has come to be regarded vaguely,—perhaps even rather vaguely by the members of that profession of whose glory his career is a part.

It is because he is worthy of very definite remembrance, and never more so than in our day, that I am now venturing to speak briefly of his career and of the effect of his work on the movement for international peace.

He was born in Holland in 1583. He came upon the scene when armed conflict was so constant and universal as to seem inevitable. There was not an hour in his life when Europe was free from it.

His Education.

From his youth he was so conspicuous that the record of his life, which has come down to us, is very complete, and the figure which it presents very distinct. There even survive portraits of him depicting, as the historian Motley says, a man "of singular personal beauty, tall, brown haired, straight featured, with a delicate aquiline nose and piercing dark blue eyes." His mental endowment was quite as striking. There have been other minds as vigorous and versatile, but few more so, and there has hardly been a mind more precocious. The story of his youthful achievements would be incredible without the convincing evidence which is supplied from many sources. Entering the University of Leyden at the age of eleven, he attracted the attention and won the friendship of the leading men of the faculty, one of whom at least was a scholar who is not yet forgotten. It was quickly predicted that he would rival, if not excel, that other remarkable Hollander, Erasmus, the memory of whose extraordinary gifts and learning was then fresh.

Becomes a Lawyer.

When he received his degree at the age of fifteen, his powers were mature, his general education as ample as the university could afford, and his preparation complete for the profession which he had selected. In making that selection he followed the example of his father and grandfather, both of whom were lawyers.

Confident and eager, his hands filled with early laurels, but stretched out for those more to be desired, he at once went to the front. He tried his first case in 1599, and at the age of seventeen he was in full practice before the courts of The Hague.

Diplomatic Service.

Meanwhile, just after his graduation, he had accompanied the leading statesman of his country, John of Barneveld, Advocate of Holland, on a diplomatic mission to Paris. There, while in his sixteenth year, he was welcomed to the brilliant circle of which Henry IV., gathering about him the most gifted intellects of France, was the chief. It was then that he received from the University of Orleans the honorary degree of Doctor of Laws.

Authorship.

As a boy, a university student, and a young lawyer, his scholarly tastes and his talent for research and literature were displayed in a variety of original productions and translations. The critics comment upon the extent of his knowledge, which was that of an expert in

many subjects, including astronomy and mathematics, upon the strength of his reasoning, and upon the elegance and animation of his style, which adorned whatever he wrote. Among his youthful writings was a history of the struggle of the Provinces with Spain. The States General of the Republic chose him over many others for this task when he was only twenty, and not offering for the appointment.

In the light of this recital, we do not wonder that at an age when most men are barely standing on the threshold of the serious business of life, Grotius was spoken of as the "miracle of Holland" and the "pride of Europe."

Advocates the Freedom of the Seas.

His reputation as a lawyer grew rapidly, and he was still very young when he was elevated to an office which, discarding its local name, we may think of as that of Attorney General of Holland and Zealand. Already he had been engaged in great cases. One of these was of vital interest not only to his client, but to more than one nation, and started currents of thought and action perhaps unexampled in the annals of litigation. His client was the Dutch East India Company, which, in its commercial ventures, was forcibly opposed by the Portugese government by virtue of its prescriptive claim of dominion over the eastern seas. One of the vessels of the company, using force against force, had captured a rich Portugese galleon in an encounter in the straits of Malacca. It was contended in Holland, in behalf of the Portugese, that the company could not lawfully make such a capture, and the broad question was raised of the right of all to navigate and fish in the open seas without being limited or restricted by such claims as that of Portugal. The brief, so to speak, of Grotius on this question was prepared in 1604, when, as we would say, he had just attained his majority. The brief was not published, and the manuscript was not discovered until 1868, when it was found that one of the chapters of the brief was identical with the work entitled "Mare Liberum," which was published by Grotius in 1608. The Mare Liberum was afterwards answered by the work entitled "Mare Clausum," the author of which was none other than the famous lawyer John Selden, of the Inner Temple, London. The English were making, in respect to the northern seas, a claim similar to that of the Portugese with respect to the eastern seas, and Grotius' argument applied as well to the one claim as the other. The proposition for which he stood was that the ocean is free to mankind for the purposes mentioned. This proposition is now conceded as a principle of international law, but it had not yet been conceded by England when, prior to the War of 1812, the British government exercised the right of searching vessels on the high seas. The proposition was, however, successfully urged by Great Britain in the Behring Sea arbitration of 1893 against the claim of the United States in respect to the Alaskan waters. Thus his employment as counsel led Grotius to a careful study of maritime law, which resulted in his argument in favor of a principle which was then considered novel, and which, reluctantly accepted by great nations, is at last in our time approved by all.

Adept in Maritime Law.

A master of maritime law, and a leader in that branch of his profession, it is not a mere fancy to suppose that Grotius was the adviser of the merchants and mariners of his country, whose memory lingers in the early history of America. They were the men who, seeking chances for colonization and commerce, made the flag of the Netherlands as well known along our Atlantic seaboard as that of England, and not at New Amsterdam alone, for the ships which they owned and manned were a familiar sight as far south as the harbor at Jamestown, where the right of the Dutch to trade freely was secured by a statute of our colony. It was not in such a ship, however, but, as if the event must have an ominous circumstance, in a war vessel flying the same flag, that the first negroes were brought by his countrymen to Virginia.

A Foreign Mission.

In the flush of his labors and successes

at the bar, the public demand for his services began to draw Grotius away from his profession. He was sent by his government on a mission to England that had reference to the same question which was the subject of the Mare Liberum. So, the lawyer and author entered the field of diplomacy. As in his youth he had impressed Frenchmen, so now, according to information which can be regarded as accurate, for letters remain from distinguished men with whom he came in contact, he stirred the admiration of Englishmen. This is significant evidence of his unusual personality, for his visit fell in that period when the English intellect was in its full flower,—the period which would be always memorable had it produced only Shakespeare, Bacon and Raleigh.

Representative in the Assembly.

While still a busy lawyer, he was chosen to sit as a representative in the Assembly of the States of Holland, and afterwards as a representative in the Assembly of the States General of The Netherlands. Entering the field of statesmanship, he took his place as one of the leaders of the Dutch Republic, beside his patron and friend, Barneveld.

Theological Controversy.

At thirty-five he was eminent as author, lawyer, diplomat, and statesman. His private life was stainless, his genius had brought renown to his country, and he had proved himself an efficient servant of Holland and the Republic. And yet it was then that his good fortune having reached its height, the ebbing of the tide set in. It was a time of theological controversy, and into that field also Grotius entered under the mandate which seemed to impose itself upon every one of prominence. The issue in Holland was between the followers of Calvin and the followers of Arminius. The debate was carried on by those who reasoned interminably,

> "Of Providence, fore-knowledge, will, and fate,
> Fixed fate, freewill, fore-knowledge absolute."

Grotius was a friend and adherent of Arminius, who had been a professor in the University of Leyden. His views he put forward in essays, which, as those who have read them tell us, were marked by a conciliatory tone then most rare. It was in fact his tolerance—a sort of sweet reasonableness that marked all the workings of his mind—that brought on the crisis of his career. With Barneveld he was instrumental in having an edict enacted forbidding ministers to handle disputed dogmas. There was agitation. Popular disturbances took place. There was even rioting. In 1618 the authorities of the Republic, hostile to the cause which Barneveld and Grotius espoused, had them arrested and imprisoned. They lay in prison until the spring of the next year, when they were brought to trial at The Hague.

Trial and Conviction.

The court was made up of twenty-six persons, called commissioners, nominated by the States General. The defendants objected to the authority of the States General, claiming that they were amenable only to that of Holland. They objected to the jurisdiction of the court, claiming that it was illegally constituted, and they objected to its integrity, claiming that among its members were those who were their personal enemies. They objected to the statement of the charges, as we would say, to the indictment, a sample of the allegations being that "they were public disturbers of the tranquility of the Republic." protesting that it should be more explicit in order that they might be advised of what they were really accused. All of their objections were overruled. They doubtless expected nothing else. They perhaps understood that the result being predetermined, the accusation had been framed in the most general language so that the discretion of the court might be untrammeled. They perhaps realized that they were in the midst of one of the long line of tragedies which ended only with those changes in criminal jurisprudence in later times which drew an impassable line of separation between the legislative and the judicial functions, —such a tragedy as had for its victim the Athenian philosopher,—such a trag-

edy as had the Divine Man for its central figure. They defended themselves with great ability and skill, Barneveld being tried first. Both were convicted. Grotius, upon being informed of the result, summarized the prosecution by declaring that he had been tried, convicted, and sentenced against all principles and forms of law.

Death of Barneveld.

It was on the 13th day of May, 1619, that an officer visited the cell of Barneveld, who was confined apart from Grotius, to inform him that, according to the judgment of the court, he had only a few hours to live. There was not then a more accomplished statesman in Europe than the man summoned to his death, or one more widely known. In The Netherlands there was no man more capable and patriotic, and none who had rendered such long and valuable service. He, next to William of Orange, deserved the gratitude of the people of the Dutch Republic, whose institutions the two men, laboring together, had raised and supported on the ruins of Spanish tyranny. His first inquiry of the officer was, "Have you heard whether Grotius is to die?" When the officer could not tell him, Barneveld remarked that he would most deeply grieve if such were the fact. "That great rising light, Grotius, is still young," he said, "but a very wise and learned gentleman, devoted to his fatherland with all his zeal, heart, and soul, and ready to stand up for her privileges, laws, and rights. As for me, I am an old and worn out man. I have already done more than I was really able to do." In the early morning, after a night, as serene within his cell as under the stars without, Barneveld went to his execution. Among his last messages were words of farewell to Grotius.

Imprisonment.

Grotius's life was spared. His sentence was perpetual imprisonment and the confiscation of his property. Removed from The Hague to a castle near by, he was confined in two small rooms. For bodily exercise he spent a part of each day spinning a top which his jailer had allowed him to obtain. I again quote Motley, who describes his deportment in prison as a magnificent moral lesson: "And thus," says Motley, "nearly two years wore away. Spinning his great top for exercise, soothing his active and prolific brain with Greek tragedy, with Flemish verse, with jurisprudence, history, and theology; creating, expanding, adorning, with the warmth of his vivid intellect, moving the world and doing good to his race from the depth of his stony sepulcher, Grotius arose superior to his doom, and took captivity captive." At the beginning he was in solitary confinement and treated with rigor. Soon, however, the treatment was more lenient, and his wife was permitted to be with him. At last, with her aid, he made a romantic escape, concealed in a chest used for carrying books to and from the castle. He was transported in that way for some distance to a place where those waiting for him dressed him in the garb of a mason, with hod and trowel, and in that disguise he made his way southward, and finally to Paris.

Publishes His "Law of Nations."

A quarter of a century of his life still remained. He spent much of it in the service of the government of Sweden, as its representative at the French Court. But before entering that service he published in 1625 his work on the Law of Nations, which gives him his fame. It is interesting to know that this work, like the Mare Liberum, had its origin in his labors as counsel for the Dutch East India Company in connection with the case already mentioned. This has been made apparent by the comparatively recent discovery of his brief in that case. The brief, written when he was only twenty-one, simply foreshadows the greater work of his later years.

Death in Exile.

Always yearning for his native land, he returned to Holland only to be sent into banishment. Towards the end, having severed his relations with Sweden, he started on a voyage in the direction of home. He was shipwrecked on the shores of the Baltic, and, traveling over-

land in an open vehicle in a heavy storm, reached the town of Rostock, weary and ill. There, among strangers, he died in 1645. In the unpretentious epitaph which he left he described himself as captive and exile.

A few miles from The Hague is the town of Delft. Delft was Grotius's birthplace, and there he now rests within the same church which contains the tomb of his compatriot, William of Orange.

De Jure Belli et Pacis.

It is because of his greatest work, which upon its publication was at once read and discussed throughout Europe, and which soon contributed to bring about, if indeed it did not inspire, the Peace of Westphalia, that Grotius is thought of as the pioneer and prophet of the modern development of the law of nations.

That law, like any other body of law, is, of course, the result of a process of evolution. The process up to the time of Grotius had, however, served only to produce what an American publicist has described as a chaos of opinion. Dealing with this crude and disorderly mass, Grotius wrote the De Jure Belli et Pacis.

Hallam, in his careful analysis, says: "The book may be considered as nearly original in its general platform as any work in an advanced stage of learning can be. . . . No one had before gone to the foundations of international law so as to raise a complete and consistent superstructure; few had handled even separate parts or laid down any satisfactory rules concerning it." It is an exhaustive compilation of the views of statesmen, jurists, and philosophers, as well as everything in the way of precedent. But it is far more than this. The work is an attempt to ascertain the principles which should control nations in their conduct towards each other, and which the author considered should guide the evolution of the law of that conduct.

Equality and Independence of Nations.

These principles he announced at the time when the knell of the world-empire idea was being sounded. Their steady application, as suggested at the outset, was conditioned upon the existence of the system of equal independent states. And their application has become more direct and effective as the spirit of nationalism, harmonizing and centralizing, and yet not centralizing to the point of endangering a reaction in favor of imperialism, has strengthened that system. In the recent period that spirit has been actively at work. To illustrate, during the last century feeble and restless communities, under the lead of Cavour, were welded into what is now the Italian nation, and other communities, under the lead of Bismarck, were welded into what is now the German nation, and a little earlier thirteen American communities have been welded into the plural unit which is our Republic. And we have seen our Constitution so modified—the federation so completely nationalized—that no question can now be raised by any of our states which is incapable of peaceable settlement.

Moral Obligation of Nations.

Grotius declared as a fundamental premise that a nation, like an individual, is able by reason to discern what is just, and, having done so, is bound by moral obligation to refrain from what is unjust. He thus found in the natural law, the everlasting existence of which, as he assumed, is not dependent on experience, and is not affected by the alteration of creeds and manners, the basis of international law.

Injustice of War.

He unreservedly condemned the excesses of war as unjust. He said: "I saw in the whole Christian world a license of fighting at which even barbarians might blush; wars begun on trifling pretexts, or none at all, and carried on without reverence for any Divine or human law, and as if a single declaration of war warranted any crime."

He did not condemn every war as necessarily unjust, but he took issue with those who considered any war desirable. One of his contemporaries was Machiavelli, who, in his treatise called "The Prince," said: "A prince is to

have no other design, nor thought, nor study but war and the art and discipline of it. For, indeed, that is the only business worthy of a prince." This treatise was published with the approval of the papal authority. The same authority—and the statement is not made as a reproach, but to indicate the dominant sentiment of the times—placed the ban of its censure upon the merciful and pacific work of Grotius.

He did not delude himself by believing that armed conflict would soon cease, but he condemned as unjust any war which is possible to be avoided, and he was convinced of the availability in most instances of some method of avoiding war.

Arbitration.

He was specific in pressing upon nations the duty of settling their differences by conference, by arbitration, or even sometimes by lot, rather than by war. As a most competent critic has said, Grotius planted the germ of international arbitration, as we know it, in modern thought. Along the same line he urged that conventions be held in which those nations, not themselves interested in pending controversies, might decide those controversies and arrange for the enforcement of the decisions, so as to remove any ground for conflict between the nations immediately interested. Again he was forecasting the future.

Looking over the interval since the death of Grotius, there is no difficulty in perceiving how his views have gained ground, and how extensively the evolution of the law of nations has been guided by the principles which he advocated.

Adoption of His Views.

He knew that nations, without their consent, cannot be subjected to the natural law which imposes upon them moral obligations. But he insisted that they should consent to be thus subjected. He meant that their positive law should express their moral sense. He was adversely criticized for theorizing and dreaming about what the law of nations should be, and, as some believed, never would be, rather than announcing what it was. But as I understand, the validity of his premise has for a long time been uncontested. Unless I misapprehend, it has from the foundation of our government been approved in this country. It seems to pervade the utterances of our courts. As far back as 1781, the Federal Court of Appeals, at Philadelphia, said in an admiralty case, "As the state of nature was a state of peace, and not a state of war, the natural state of nations is a state of peace and society, and hence it is a maxim of the law of nations, founded on every principle of reason, justice, and morality, that one nation ought not to do an injury to another. As the natural state (that of nations) is a state of peace and benevolence, nations are morally bound to preserve it." In another admiralty case, Chief Justice Marshall, speaking for the Supreme Court, denounced the slave trade as contrary to the law of nature, and as a practice which should be forbidden by the law of nations. In passing, it is of interest to observe that in the same case Marshall said: "No principle of general law is more universally acknowledged than the perfect equality of nations," thus stating the doctrine which was slowly gathering strength in Grotius's time.

America's Tribute to Grotius.

In opening the first conference at The Hague its president remarked: "It is here, as one may say, that the cradle of the science of international law has stood." The scholar and diplomat, Andrew D. White, who headed the delegation from the United States, wrote in the delightful diary which he kept during the sessions of that conference, "More than ever it is clear to me that of all books ever written, not claiming Divine inspiration, that great book of Grotius, 'War and Peace,' has been of most benefit to mankind. Our work here at the end of the nineteenth century is the direct result of his at the beginning of the seventeenth century." On our national holiday in 1899, the American delegates, carrying out the instructions of our government, laid upon the tomb of Delft, a spot which should

be a Mecca for the lovers of liberty and peace regulated by law, a wreath made of the precious metals and inscribed,

"To the memory of Hugo Grotius
In Reverence and Gratitude
From the United States of America."

Perhaps there were some in the company, then gathered there, who remembered the words of the pioneer and prophet himself, which should stimulate the courage and hope of all who are laboring for the triumph of the principles which he advocated: "If the trees we plant do not shade us, they will at least serve for our descendants."—From address delivered before the Virginia Bar Association, 1910.

The Coronation Ceremonial

The recent Coronation is full of interest, says the London Law Times, to the student of the development of the English Constitution. The contrast in its effects between the coronation of an English Sovereign of the present day and the same ceremonial in early times cannot, perhaps, be more vividly pictured than by the statement of the fact that formerly there was a real interregnum between the death of one king and the election or cleric's choice of another. Until the new king was crowned the king's peace was in abeyance. The state had no one to represent it for the purpose of enforcing the peace, which was, however, maintained by the justiciar during the interval preceding the coronation of the new king: (Stubbs' Select Charters, p. 446; Anson's Law and Custom of the Constitution, ii., the Crown, Part 1, p. 227). The Crown was elective. No man had a right to become king till he had been called to the kingly office by the clerics of the assembly of the nation, and no man actually was king till he had been admitted to the kingly office by the consecration of the Church. Edward I. was the first king whose reign began before his coronation; he was absent in Palestine when his father died, and his right was acknowledged without opposition.

But even in this case there was an interregnum. The regnal years of Edward I. are not reckoned from the day of his father's death, but from the day of his funeral, when the prelates and nobles swore allegiance to him. Edward II. dated his reign from the day after his father's death. No sign of the doctrines that the king never dies, that the throne never can be vacant, that there can be no interregnum, and that the reign of the next heir begins the moment the reign of his predecessor is called can be found at any time earlier than the reign of Edward I. (Freeman's Growth of the English Constitution, p. 144). From the accession of Edward I., the first king who reigned before his coronation, hereditary succession became the rule in practice. . . .

Down to the time of Henry VIII. the old ecclesiastical form of choosing the king remained in the coronation service, which in its present form falls into three stages of ceremonial which are full of historical and constitutional interest: First, the recognition and the oath; then the annointing, investiture, and actual crowning; and, lastly, the homage of the Lords Spiritual and Temporal.

The recognition represents the great officers of the Witan or council presenting the Sovereign of their choice to the assembled people, who are asked to record the national approval of the chosen king—the people being for this purpose more especially represented by the boys of Westminster School, who take the part played by the crowd at a mediæval coronation. While the coronation oath indicates the contractual character of English sovereignty, the annointing, the investiture, and the crowning would seem to confer upon Royalty its sacred character, while the homage of the Lords Spiritual and Temporal represents the oath of fidelity by the Ministry of Saxon times, and later by the great vassals of the Crown, which gave practical security to the new reign: (see Anson's Law and Custom of the Constitution, ii., the Crown, Part 1, pp. 235-238) . . .

Strategy--A Story Partly True

BY HON. A. G. ZIMMERMAN

County Judge of Dane County, Wisconsin.

SIR Francis Fleece was not in a happy frame of mind. He opined that he had been duped by this clever American sheepman. His discomfiture resulted not so much because of the financial loss, which, however, promised to be considerable, as from the fact that he had been deliberately taken in and sheared by this impudent Yankee parvenu.

Moreover the Englishman's condition of mind was not improved by the realization that there was no one to blame but himself. Contrary to his usual custom, he had made this particular deal personally and in friendly social intercourse with the visiting American.

On its face, too, it seemed at the time a square, safe business deal between man and man, without special mutual guaranties. The doctrine of *caveat emptor* prevailed in the transaction, and Sir Francis now recalled his complaisance in reflecting then that the advantages, if any, were in his favor.

The British nobleman was perusing his foreign mail, just arrived, at his country seat in Shropshire. The epistle which aroused his ire and destroyed his equanimity was from a widely known and responsible commercial agency at Washington, and read as follows:

Sir Francis Fleece,
Barometer, Shropshire, Eng.

Dear sir: As a final result of thorough investigation, we herewith repectfully report that several months ago Mr. Franklyn Swift disposed of his entire property interests (including the sheep purchased from you) to his father, Mr. Aaron Swift, in payment of a bona fide debt, the complete transaction being shown by the public records.

The son is hopelessly insolvent, and your claim against him is therefore worthless. As an ultimate concession, however, and without any legal obligation to pay a penny, the father offers to liquidate your claim by the payment of 20 per centum or two thousand dollars for a quittance.

Failure to immediately accept this gratuitous offer will result in its withdrawal and a total loss to you of two thousand pounds sterling. We advise prompt acceptance by cable.

Yours very truly,
A. B. Gun & Co.,
Per Gun.

The claim of the incensed nobleman against the younger Swift resulted from the sale some six months before of a fine flock of high-grade Shropshires. At that time this cock-sure commercial agency quoted Franklyn Swift's rating at several times the $10,000 credit, and there was every evidence of permanent prosperity.

All things considered, it was quite evident now that the Swift people saw an opportunity to turn a smart Yankee trick by forcing the accommodating foreigner to settle English pounds by the acceptance of a like number of American dollars,—or nothing.

The scheme must have been most cleverly arranged with scientific completeness to convince so astute and reliable a concern as A. B. Gun & Co., whose reputation was international. But Sir Francis was a stubborn Britisher, who was willing to risk much, rather than to confess that he was outmanœuvered by these swift Americans. He would have all or nothing, and he would show these sheep sharpers that there was some truth in the tradition of British bulldog stubbornness and worrying tenacity.

In his dilemma, the Englishman recalled another American business acquaintance, who also dealt in Shropshire sheep as it happened, and for whose integrity and business acumen he had the highest respect. This American was abundantly responsible and under friendly obligations for past favors. To Artemas Sable, therefore, he wrote such an account of the situation as to gain that

gentleman's sympathy and proffer of active assistance.

Moreover it appeared that Sable had had several deals with the Swift people, and, while on apparent friendly terms with them at this time, the results had not been entirely satisfactory to him. He rather felt that he had been overreached and taken advantage of. He was more than willing to even up things,—to perform a friendly office for Fleece by paying off an old score to Swift.

Artemas Sable was an opportunist and a firm believer in Mazeppa's Byronic philosophy:

"At length I played them one as frank—
For time at last sets all things even—
And if we do but watch the hour,
There never yet was human power
Which could evade, if unforgiven,
The patient search and vigil long
Of him who treasures up a wrong."

Sable lost no time in presenting the situation to his solicitors, Messrs. Goforem & Getem. These gentlemen realizing the almost insuperable difficulties in the way of a successful issue, at least without protracted litigation, desired a free hand and direct authority from Sir Francis Fleece to act. They were given full power by cable, on the suggestion of Artemas Sable.

There was considerable delay in getting the Fleece documents out of the hands of the Washington commercial agents. Having had an offer of $2,000 in settlement, these thrifty gentlemen insisted on the payment of a 10 per cent fee before letting go. Technically, they justified their demands on the grounds that they had accomplished something, and all that anyone could possibly accomplish under all the circumstances. As time was important, Sable, gratuitously for the time being and under protest, advanced the sum claimed, the papers being thus finally obtained.

Solicitors Goforem & Getem had taken on a rather large contract. It was up to them to collect $10,000 for the distant Englishman, from a man in another state who was insolvent, and who had so disposed of all his property as to apparently present a clear record legally.

Of course the father, Aaron Swift, was abundantly responsible. It was possible, after an extended controversy in the courts of the enemy's territory, that the property transfers between father and son might be set aside. While this was possible, yet, under all the circumstances, it was not at all probable.

This was not a situation where a bold frontal attack and a pitched legal battle was likely to be successful.

It was rather a case for the exercise of astute strategy, and the solicitors, backed by the resourceful and willing Sable, were thoroughly alive to the requirements.

It was desirable that a succinct plan of operations should be carefully devised in advance. The details must be worked out, and all the probabilities and possibilities foreseen and provided for.

With the co-operation and assistance of his law partner and of keen Artemas Sable, this plan of operations was carefully outlined by Colonel Goforem. The main responsibility for its execution on the field of strategic battle was placed in the hands of the younger lawyer, Mr. Getem.

Artemas Sable was to work apparently independently and without any visible connection with Sir Francis Fleece's interests.

Over all the doughty colonel kept in his hands at the home office the entire situation, by the giving and receiving of information and directions by mail and telegraph, so that the work of the two lawyers would be harmonious and as effective as possible.

Colonel Goforem was a man of wide experience and far-seeing judgment. He was a politician as well as an able lawyer, and had served a number of years in Congress. He knew men and the motives which govern their actions. Having discovered that the younger Swift was afflicted with vanity and conceit, as well as with dishonesty, the resourceful lawyer came to the conclusion that these weaknesses could be made the mainspring of his undoing.

The entire strategic plan of operation was based upon two known forces that could be utilized,—one the vanity of Franklyn Swift, and the other the keenness of Artemas Sable both in fulfilling the Byronic philosophy and in readiness to make an advantageous bargain.

As the first move in the campaign of strategy, Artemas Sable wrote a friendly letter to Franklyn Swift, making some unimportant inquiry as to the pedigrees of certain sheep that Swift had once owned. In a postscript to this letter and as an apparent incidental afterthought, Sable suggested that he was looking for some good bargains in imported Shropshires, and would appreciate any pointers as to any such that might be in the market, if Swift happened to know of any.

Under delicate manipulation, the correspondence between Artemas Sable and Franklyn Swift developed a keen desire on the part of the latter to sell at most favorable terms the entire holdings of domestic as well as imported Shropshires at the Swift farm. They were apparently anxious to get clear of the sheep business before encountering further Fleece complications. As anticipated the younger Swift in his letters assumed personal ownership of the whole.

The ground work having been satisfactorily laid, Mr. Getem, accompanied by Artemas Sable, went to the enemy's country, they separating when nearly there. The lawyer remained incognito, and proceeded to quietly and thoroughly investigate the entire Swift situation, without disclosing his identity or his purposes.

After the surreptitious investigation had sufficiently developed the enemy's legal position, Artemas Sable, who had meanwhile kept in the background, was advised as to conditions, and given his cue. That clever manipulator so managed his negotiations, as to strike an advantageous bargain with the younger Swift (in the presence of witnesses and with the father silently looking on) for the Swift holdings. He obtained an itemized bill of sale from Franklyn Swift for the whole, paying $100 down to bind the bargain.

The stock was to be shipped as rapidly as the pedigree transfers could be made, and Sable was soon across the state line on his way home with a car load or two of sheep amounting to several thousand dollars. Before leaving, he secretly gave the facts of the transaction to the investigating lawyer, who also retained the bill of sale.

So far everything was proceeding satisfactorily.

The lawyer's investigation developed that the son had, some months before, made an apparently bona fide transfer of the farm to the father, in payment of the latter's legal claims thereon. The report to Colonel Goforem (December 20) as to the personal property was summarized as follows:

"The records show that the son has no personal property, and has owned none since about October 3. On September 23 a chattel mortgage from son to father for $8,000 was filed in the clerk's office. This is not satisfied on the records, but the mortgage itself was taken away by the father on October 3, and at the same time he filed with the clerk a bill of sale from son to father of personal property amounting to $10,000. This bill of sale is still on record, and includes the sheep sold three days ago to Sable by written bill of sale from the younger Swift.

"To clinch matters, I to-day filed a copy of this last contradictory bill of sale, the Swifts, of course, being of the impression that the document and all knowledge thereof went out of the state with Sable."

In the meantime the home office struck a snag in the shape of a telegram from Franklyn Swift to Sable, reading:

"My father, being interested in these sheep, refuses to let me ship more without cash payment. Am sorry. Come at once."

This indicated that "the cat" was partly "out of the bag," and subsequent developments showed that Gun & Co.'s local attorney had disclosed Sable's connection with Fleece to the Swifts. It was not a pretty or lawyer-like proceeding, but it might have been done inadvertently. There are lawyers and lawyers.

However, no great harm was done as Sable had already been served with garnishment papers, which were on their way toward the principal defendant in a suit instituted in behalf of Fleece.

The trap was about ready to be sprung,

and matters were simply hurried slightly by this slip.

At this stage of the game, Lawyer Getem suddenly appeared before Franklyn Swift and demanded immediate payment of the Fleece $10,000 notes.

Payment was of course refused, as expected, on the ground of complete insolvency and no assets.

Thereupon Mr. Getem quietly took from his pocket and served upon Franklyn Swift papers beginning suit in behalf of Sir Francis Fleece for the money, and also served a notice that Sable had been garnished for the amount due on his contract of sale with the defendant, thus tying up in the courts the entire amount involved.

Artemas Sable by agent also demanded immediate delivery of the remaining sheep, and threatened an action in replevin in case of failure to promptly comply with his demand.

The Swifts endeavored at first to do a little bluffing on their own account, but when the enterprising lawyer disclosed to them his minute knowledge of their various devious transactions, and the fact also about the final bill of sale being on the public records, they wilted.

Mr. Getem gently informed the entrapped Swifts that they were so badly tangled up in the meshes of the law, that the best thing they could do for themselves was to pay up in full without delay, and thereby avoid—a lot of troublesome things, among which unpleasant publicity was the least.

The conference was postponed to the next day to enable the Swifts to consult their solicitors. This was eminently proper. Meanwhile Getem reported progress to Colonel Goforem, and received this characteristic encouragement in reply:

Stay with them until the hide comes off. Your affidavit face and determined jaw should bluff full cash without litigation.

Goforem.

Of course Lawyer Getem "stayed" and got "em."

The Swifts were so enmeshed, with the tables so completely turned on them, that they were strategically compelled to pay in full without further litigious delay.

When the delighted Getem returned home, and reported in detail to Colonel Goforem the final and complete success of their legal strategy, he had a rather remarkable surprise awaiting him.

The lawyers had been discussing in their offices the satisfactory denouement with the $10,000 draft before them on the desk, when Colonel Goforem, with a twinkle in his eye, took a yellow slip from his inside pocket and handed it to his partner with the remark, "Read that cablegram." It read:

Balmoral, Shropshire, England.
To Goforem & Getem, Solicitors,
Sir Francis seriously ill. Desires to settle affairs. You are instructed to accept Swift offer made to Gun.

Webster & Churchill,
Fleece. Solicitors.

"Great guns!" exclaimed Getem, "Why that offer was only $2,000! When did you receive this cablegram, Colonel?"

"A week ago," smilingly replied that gentleman.

"You don't mean it! That was when everything was in the air, and we weren't sure of anything! What was your reply?" excitedly inquired the junior partner.

"Here is a copy of what I told them," passing over another yellow slip.

It was in the following terms:

To Webster & Churchill,
Solicitors, Balmoral, Shropshire, Eng.
We're no quitters. Will follow our judgment, or accept immediate discharge by cable.

Goforem & Getem,
Fleece Solicitors.

"Well, you had your nerve with you, but, that is about what I'd expect from you. Did you get an answer?" interestedly inquired Getem.

"I did not," replied the senior partner, "but we'll send them another cablegram now, and let them know that the illegal Swift fleecers were themselves legally fleeced to the full limit."

Query: Looking at the matter from a Sunday-school standpoint, did the end justify the means?

Editorial Comment

Current thoughts on timely topics

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Edited by Asa W. Russell.

Intervention

NOW that President Diaz has resigned and gone into exile, peace ought to be speedily restored in Mexico. It is not likely that the affairs of our sister republic will so shape themselves as to require the drastic measure of intervention.

President Taft cannot be too highly praised for his forebearance, and for the calm and statesmanlike way in which he has discharged a delicate duty. Technically the action of the Mexican combatants in firing into American territory was an act of war, and would have justified armed intervention on the part of the American government to protect its citizens. When indiscriminate rifle fire was persisted in, after protest had been made, force might properly have been used to establish a neutral zone on both sides of the border. But the event is justifying President Taft's patience during that critical period. He had the moral courage to avoid a conflict which would have required the indefinite maintenance of a large army and the expenditure of incalculable blood and treasure.

The Institute of International Law

THE Institute de Droit International, says the London Law Journal, which has just been holding its conference at Madrid, is the most distinguished of the various associations of jurists and publicists which are engaged in the work of preparing and formulating the law binding upon the society of nations. Founded in 1873 'to transform the society which exists *de facto* between nations into a society of law,' it consists of the acknowledged masters of the science and practice of international law in the chief countries. Its members and associates are limited alike to sixty persons, and such is the reputation which its resolutions command that most of them have passed into the conventional law of nations. It is, indeed, primarily to the Institute that we owe the remarkable development of the jural relations between states during the last thirty years. At its first conference, in 1874, the Institute drew up a project for settling the arbitral procedure between nations, which has largely passed into the Hague Conventions on the subject, and has been the basis of the striking progress of international arbitration. At its second and subsequent meetings it prepared draft codes of the laws of war on sea and land, which have likewise passed in great measure into the International Conventions of the Hague and the Declaration of London. At the meeting of 1910 in Paris, the Institute appointed a commission to consider and select the topics which might

most usefully be considered as a prelude to the third Peace Conference, to be held at the Hague in 1915, and to organize their discussion. The experiences of the last Hague Conference proved the desirability of a preliminary consideration of the proposals to be submitted to the international assembly, and unofficially the Institute is recognized as the proper body to undertake the initial survey. Hence on this side of public international law the meetings of this and subsequent years will largely be taken up with the questions of compulsory arbitration, the limit of territorial waters, the undecided points in the law of belligerents and neutrals, and the law of the air, on which it is desired to focus attention at the Parliament of the Nations in 1915. The Institute, in fact, plays the part in the making of the *Jus Gentium* which the great jurisconsults at Rome played in the development of the *Jus Civile;* and the authority for its work resides in the growing force of reason and humanity.

Arbitration Treaties

THE principle of arbitration of practically all disputes between nations, including even questions of vital interest and national honor, assumed vitality when Secretary of State Knox submitted to the British and French ambassadors at Washington the draft of a convention to serve as a basis of negotiations.

"The general features of the draft are these: It is to expand the scope of our existing general arbitration agreements by eliminating the exceptions contained in existing ones of questions of vital interest and national honor.

"It is proposed that all differences internationally justiciable shall be submitted to The Hague tribunal, unless by special agreement some other tribunal is chosen or selected.

"It provides that differences that either country thinks are not internationally justiciable shall be referred to a committee of inquiry with power to make recommendations for their settlement. This commission to be made up of *nationals* of the two governments who are members of The Hague court.

"Should the commission decide that the difference should be arbitrated, this decision is to be binding.

"Arbitrations are to be conducted under terms of submission, subject to the advice and consent of the Senate.

"Before arbitration is resorted to, even in cases where both countries agree that the difference is one susceptible of arbitral decision, the commission of inquiry shall investigate the difference with a view of recommending a settlement that will preclude the necessity of arbitration. The action of this commission is not to have the effect of an arbitral award. The commission, at the request of either government, shall delay its findings one year to give opportunity for diplomatic settlement."

The German government has been informally advised by Secretary of State Knox that the United States is willing to negotiate with Germany a general arbitration treaty submitting all future disputes to arbitration, which will be similar to the conventions now being arranged between France, Great Britain, and the United States. It is also said that negotiations for a general arbitration treaty between the United States and Japan are expected to begin soon.

Thus is inaugurated the practical recognition, by the great nations of the earth, of the fact that international disputes may be settled by other means than war. The time has gone by when one nation may overawe another with its military preparedness, or by a truculent display of military or naval force.

The fact that arbitration is not completely obligatory is a weak point in the proposed treaty. Its force is further weakened by the provision that preliminary treaties of reference must, in the United States, receive the consent of the Senate.

It is probable that before the meeting of the Third Hague Conference there will be earnest agitation in behalf of a world treaty of obligatory arbitration, similar to that now in force in the case of contractual debts. Perhaps when the principal powers of Europe have become accustomed to the existing limited arrangement under the present conven-

tion, they may be persuaded to go farther and consent to a compulsory clause. Meanwhile, the fact that the proposed arbitration treaties will not give us peace by compulsion does not detract from the immense value of the achievement now apparently on the eve of consummation.

Centenary of the Treaty of Ghent

THERE is undoubtedly a genuine public sentiment favorable to a celebration of the centennial of the treaty of Ghent, which was concluded by the peace commissioners of the United States and Great Britain on Christmas eve, December 24, 1814. "Nearly 100 years have passed," said Honorable William W. Griest, of Pennsylvania, "since that treaty was concluded; and in this century of peace neither country has been compelled to expend vast sums of money from the public treasury, either on the high seas or the Great Lakes, in preparation for a possible war between Canada and the United States.

"During this period of peace the people of the United States and Canada have enjoyed great prosperity and a marvelous growth along more than 3,000 miles of our northern boundary. There have been boundary disputes and fishery disputes, but the people of Canada and the United States have arbitrated these and have lived in neighborly friendship. There has been cultivated a sentiment and public opinion favoring the continued preservation of peace and harmony in the common interest of humanity, and this fraternal association is a barrier against the evils and horrors of war. The example which the two great English-speaking nations of the earth have thus rendered conspicuous by a century of peace should be fittingly commemorated in such manner as to commend to all nations of the world the advantages of international arbitration and universal peace."

"The celebration should be national in character," observes Honorable Richard Olney, ex Secretary of State, "and should be of a nature and on a scale commensurate with the great place in the world occupied by the English-speaking countries who engage in it. Three things about the treaty of Ghent make it noteworthy and its commemoration peculiarly desirable. It ended a war; it was the first step toward a real revival of kindly feeling between two great branches of the English race; and by its exclusion of warships from the Great Lakes it has presented an enduring object lesson of what two countries peacefully disposed may accomplish toward keeping war at a distance. The warship clause of the treaty has been described as a "self-denying ordinance." The description is correct if it is well to encourage the fighting spirit by a preparedness for fighting, which necessarily acts as a temptation to fight. On the other hand, the description is incorrect and the warship clause spells not sacrifice, but an enlightened view of self-interest, if peace is the true national policy and is promoted by any expedient that delays and obstructs hostile outbreaks and gives time for passions to cool and reason to reassert itself."

The views of our Canadian friends have been voiced by R. L. Borden, M. P., leader of the Conservative party in Canada, who states: "The time will soon be at hand when the Empire and the Republic may each hang upon the other's portal the garland of a century's peace. There have been differences, heartburnings, even threatenings, but, blessed be the peacemakers, there has been no conflict. It is not open to question that the anniversary should be worthily commemorated. In each country some splendid permanent memorial should be erected. But I trust that the day will be proclaimed as a national thanksgiving in both countries; that in every city, town, and village the bells will ring out their tones of rejoicing, and that the voice of praise and thanksgiving will be heard in the churches.

Canada, firmly bound to the Empire by the ties of fealty, freedom, and love, while closely associated with the Republic by constant social and commercial intercourse and by the bonds of mutual respect and good will, is clearly conscious of her responsibilities to each; and no higher responsibility is or can be hers than to aid in maintaining and strengthening during all the glorious

years to come the peace and amity which have been so happily preserved during the 100 years soon to be celebrated."

To arrange on the eve of the Third Hague Conference an impressive celebration of this historical event would be peculiarly appropriate. Dr. John Bassett Moore of Columbia University makes the practical suggestion that Canada and the United States celebrate the anniversary by exchanging on that day the ratifications of a permanent treaty of arbitration which shall sum up and worthily crown the achievements of the past and furnish a pledge of unbroken peace for the future.

The Interparliamentary Union

THE Interparliamentary Union, of which so much is heard nowadays in connection with the movement for world-peace," writes Dr. James L. Tryon, "is an association of members and ex-members of the various Parliaments of the world for the promotion of arbitration and better relations among the nations generally. It began nearly twenty years ago in the special interest taken in the subject by William Randall Cremer, a member of the British House of Commons. At first working quietly and patiently at home, he was instrumental in 1887 in causing a memorial to be presented by members of the British Parliament to the President and Congress of the United States in support of arbitration. This was followed by a similar memorial from France, expressing the wish that a treaty of arbitration might be signed between that country and ours. In 1888 Mr. Cremer arranged a joint meeting in Paris of a few members of the Parliaments of England and France. This meeting occupied itself for the most part with a discussion of arbitration between France, Great Britain, and the United States. As a result of this conference, the association now known as the Interparliamentary Union was formed in Paris in 1889. It began with a bureau of which Frederic Passy, the celebrated French internationalist and peace worker, was made president. Later on, when the organization took a more permanent shape, it formed a central council, which meets for business when the main body is not in session. It has established an executive bureau at Brussels, of which Charles L. Lange, of Christiana, has been made secretary. With one or two exceptions, annual conferences of the Union have been held, usually in some Old-World capital.

"The Association, which has grown very rapidly, now numbers about 2,500 members, and includes some of the leading public men of the day. The members of the different parliaments represented in it are organized into national groups, with their own officers. The American group, organized only five years ago, has about 200 members. Its president is Honorable Richard Bartholdt, of St. Louis, Missouri.

"The significance of this organization lies in the fact that it is composed of members of the parliaments, and that they view problems in government from an international standpoint. . . . This organization is also significant because the ideas of arbitration and peace, which in the pioneer days of the past were advocated chiefly by peace societies and humanitarians, are now being adopted by practical politicians and statesmen.

The recommendations of the Union have more weight today than those of almost any other international body."

The Interparliamentary Union, states Dr. C. L. Lange, its secretary general, has discussed at its conferences quite a number of questions relating to the progressive evolution and organization of the society of nations. The conferences have passed resolutions regarding neutrality and regarding war. Several times they have declared in favor of the immunity of private property at sea during war. Two conferences have adopted a resolution in favor of the elaboration of a code of international law. Some of them have discussed the problem of the growth of armaments.

The Union has always limited itself to the discussion of problems of international law; it has never discussed economic questions; and it has even expressly refused to pronounce itself on actual political questions.

Reader's Comments

Women as Jurors

Editor of CASE AND COMMENT:—

I noticed in the last issue of CASE AND COMMENT a reference to the trial of a Wyoming case in which the foreman of the jury is reported to have given as a reason for the verdict acquitting a woman of the murder of her husband, "We could not bear to think of sending a sobbing, shrieking woman to the gallows." The authority of the New York Evening Post is given for the account. The reference is recognized to be to the case of the State v. White, tried before me here at Sundance, last November. It is also stated that the "evidence was plain," and the result is referred to as a "miscarriage of justice."

This is truly an illustration of the saying that one must go away from home to learn the news. It is true that in the case mentioned the "evidence was plain." The parties were alone, and the woman either deliberately shot her husband as he lay asleep by her side, or the shooting was accidental, as she said it was. There were some circumstances tending to confirm each of the two theories, but no other could be framed which might find any support in the evidence. Opinion was divided, but convincing proof lacking. The jury did what any other intelligent jury might have done, —they followed the court's instructions, and declined to convict where they entertained a reasonable doubt. I cannot positively say that no member of that jury gave utterance to the words quoted, but I do not believe the statement was ever made, for there was never any situation which gave occasion for it. There is nothing to indicate that in the White Case the result would have been different had a man been on trial, or had the jury been composed of women.

The reluctance of juries to convict of a capital offense is well known, and not confined to Wyoming. Nearly everyone will recall cases of compromise upon a lesser degree of homicide, out of consideration for what others may consider undue sensibility on the part of some jurors as to capital punishment. But what is to be done in a case where no compromise verdict could be sustained by the evidence? We have been told that the establishment of female suffrage will destroy all feeling of gallantry in men toward the fair sex, in whom they recognize merely fellow-electors. Notwithstandng the women vote here, Wyoming men are gallant,—Wyoming jurors are subject to much the same influences as prevail elsewhere, though perhaps they are a little safer than the average American jury, because a little more intelligent. But there is no reason, from observed cases, to assert that Wyoming jurymen carry their gallantry into the jury box.

There is nothing in the incident which makes for or against the use of women upon juries. The question suggested by your remarks, Is a woman never to be tried by her peers until she is tried by a female jury? is interesting. Is there anything in the nature of the case which renders women more competent than men to pass upon the delinquencies of her own sex? It will promptly be said, that depends upon the nature of the accusation. It might be conceded that there are cases where women might have a better appreciation of the peculiar situation in which a woman defendant might be placed. But, on the other hand, there may be cases in which female defendants would receive less consideration from their own sex than from men. A careful attorney defending a woman of known laxity of morals, accused of whatever crime, would hesitate to place her on trial before a jury of women. He would fear that the better the character of the jury, the greater would be the prejudice against his client, and one might question whether the fear would not be well founded,—that a conviction might follow on account of the reputed immorality of the defendant independent of her guilt of the specific crime with which she were charged.

I am inclined to think that the encomium upon women jurors, said to have been indulged in by Washington judge, is the result of a hasty generalization. The law for calling women upon juries has been in effect in Washington too short a time, and the opportunity for observation has been too limited, to enable one to form a correct judgment as to the value of the system. A particular jury is commended for the high order of intelligence of its membership, the women being wives of men holding high positions in the community. Their intelligence is vouched for by reason of the standing of their husbands. But is this jury any better than one would be which was composed of the husbands of these same women? It is true, we are not likely to get a jury composed of bankers, leading merchants, railway superintendents, physicians, members of the legislature, and the like. But after the novelty wears off, and women become more accustomed to the demands made upon them by reason of their newly acquired civic responsibility, will they not also regard jury duty as an untoward burden, and will it not be as difficult to secure a jury of such women as it is now of their husbands?

Female suffrage is no new thing in Wyoming. Men and women accept it as a perfectly natural condition, and neither are driven to eccentric manifestations of lunacy on account thereof. Jury service is not a necessary concomitant. In this state women vote and hold office (when the voters think them qualified), but they do not sit on the jury, and they do not desire to be sheriffs, nor road supervisors, neither do they insist upon having their "fair proportionate share" of the offices. These things are regulated upon other considerations than that of sex merely. Is Wyoming to be blamed for a complacent smile as she watches her sister states in their antics in trying on a new suit which they are not quite sure is going to fit?

C. H. PARMELEE.

Sundance, Wyoming, May 25, 1911.

Among the New Decisions

Recent utterances of our courts of last resort.

Administrator—liability for interest. It may be stated as the general rule that the personal liability of an executor or administrator to the distributees of an estate for interest, where there has been delay in the closing up and settlement of the estate, depends entirely upon the question whether the delay was reasonable or unreasonable under all the circumstances of the particular case, he being free from personal liability for interest where the delay was reasonable, and chargeable with interest where the delay was unreasonable.

So, it is held in Re Bullion, 87 Neb. 700, 128 N. W. 32, annotated in 31 L.R.A.(N.S.) 350, that if an administrator negligently or in bad faith unreasonably delays the settlement of his estate, he is liable therefor to the heirs and distributees of such estate, for the statutory interest upon all moneys in his hands or under his control, as such administrator, from the time when such moneys should have been paid by him to the date of payment of the same.

Adverse possession—public domain—private owner. Where one takes possession of a parcel of land which is in fact held in private ownership, under the mistaken belief that it forms part of the public domain, either of the United States or of a state, intending to obtain title thereto in the regular way by purchase or by complying with all the requirements necessary to obtain a homestead, preemption claim, or timber culture claim, etc., a difference of opinion exists as to whether, by continued occupancy for the statutory period, he can obtain a title by adverse possession, good as against the true owner.

The recent Texas case of Smith v. Jones, 132 S. W. 469, holds that mere evidence that possession was taken of land under the mistaken belief that it was part of the public domain, for the purpose of acquiring title from the state by compliance with the law providing therefor, does not show that it was adverse to the true owner, if the title was in fact in a private citizen.

The numerous decisions discussing this question may be found collated in the note appended to this case in 31 L.R.A.(N.S.) 153.

Bankruptcy — statutory liability. The weight of authority sustains the rule that the statutory added liability of holders of corporate shares of stock, in addition to the par value thereof, is not a corporate asset, but a secondary or collateral liability, flowing directly to and to be enforced by creditors, and that a receiver, assignee, or trustee of an insolvent corporation cannot, in the absence of express statutory authority, recover it.

In conformity with this rule it is held in Walsh v. Shanklin, 125 Ky. 715, 102 S. W. 295, annotated in 31 L.R.A.(N.S.) 365, that the bankruptcy trustee of a corporation cannot enforce the statutory double liability of stockholders, since it is not a corporate asset, and does not pass to the trustee, but remains subject to the demands of creditors, if the corporate assets are insufficient to discharge their claims.

Carrier—connecting lines—liability for loss beyond line. How far is one of two or more connecting carriers of freight liable to the owner for loss, damage, or delay in transportation not occurring on its own line? Or, to state the question in another form, Has the particular carrier which it is sought to hold liable for such loss, damage, or delay, undertaken anything more than to carry promptly and safely over its own line, and, if it be the initial or intermediate carrier, to

deliver to the next carrier to continue or complete the transportation, or if it be the terminal carrier, to deliver to the consignee at final destination? Less than this a carrier may not do. Whether it has undertaken more depends upon its contract with the shipper.

The cases dealing with this question are collated in an exhaustive note in 31 L.R.A.(N.S.) 1, which is appended to Roy v. Chesapeake & O. R. Co. 61 W. Va. 616, 57 S. E. 39, holding that in the absence of a special contract, a railroad company, by receiving goods for transportation over its own line and other lines therewith connected, is only bound to carry the goods over its own line, and deliver them safely to the next connecting carrier.

The note is also accompanied by the case of Atlantic C. L. R. Co. v. Riverside Mills, 219 U. S. 186, 55 L. ed. —, 31 Sup. Ct. Rep. 164, holding the imposition upon an interstate carrier voluntarily receiving property for transportation from a point in one state to a point in another state, of liability to the holder of the bill of lading for a loss anywhere *en route*, with a right of recovery over against the carrier actually causing the loss, which is made by the act of February 4, 1887 (24 Stat. at L. 379, chap. 104, U. S. Comp. Stat. 1901, p. 3154), § 20, as amended by the act of June 29, 1906 (34 Stat. at L. 584, 595, chap. 3591, U. S. Comp. Stat. Supp. 1909, pp. 1149, 1166), in spite of any agreement or stipulation limiting liability to its own line is a valid regulation of interstate commerce.

It is further determined in that case that the liberty of contract secured by U. S. Const., 5th Amend., was not unconstitutionally denied by the enactment by Congress, in the exercise of its power under the commerce clause, of the Carmack amendment of June 29, 1906, to the act of February 4, 1887, § 20, by which an interstate carrier voluntarily receiving property for transportation from a point in one state to a point in another state is made liable to the holder of the bill of lading for a loss anywhere *en route*, in spite of any agreement or stipulation to the contrary, with a right of recovery over against the carrier actually causing the loss.

It is also laid down in the same decision that the property of the initial carrier is not taken in violation of U. S. Const., 5th Amend., to pay the debt of an independent connecting carrier whose negligence may have been the sole cause of a loss, by the Carmack amendment of June 29, 1906, to the act of February 4, 1887, § 20, under which an interstate carrier voluntarily receiving property for transportation from a point in one state to a point in another state is made liable to the holder of the bill of lading for a loss anywhere *en route*, in spite of any agreement or stipulation to the contrary, with a right of recovery over against the carrier actually causing the loss, since the liability of the receiving carrier which results in such a case is that of a principal, for the negligence of his own agents.

It may be said that there are two distinct and opposed rules as to the inference to be drawn from the mere acceptance of a shipment destined for a point beyond the accepting carrier's line. Under one theory, the carrier's liability continues as such until delivery at final destination, unless it expressly contracts otherwise. Under the other, its liability is confined to its own line, unless it expressly extends its undertaking to cover carriage beyond that line. Unless restricted by statute, the initial carrier may generally expressly contract for through carriage, or expressly limit its undertaking to its own line. It may also, except in a few jurisdictions, limit its liability to its own line while contracting for through transportation. Statutes exist in many jurisdictions which affect the carrier's liability in this regard, the trend of modern legislation being generally in the direction of extending, rather than restricting, such liability. Of these statutes, the most important, because the widest in its application, is the recent act of Congress of June 29, 1906, § 7, commonly known as the Carmack amendment to the Hepburn act, under which a carrier receiving property for interstate transportation is made liable for a loss anywhere *en route*, and may not contract against such liability.

Intermediate and terminal carriers, unless controlled by statute, are in general not liable for loss or delay not occurring on their respective lines.

Of course, any carrier, initial, intermediate, or terminal, is liable for a loss not on its own line, but of which its own negligence or breach of contract was the proximate cause. And where there is a partnership or joint undertaking of carriage, each carrier belonging to the partnership or participating in the joint undertaking will be jointly liable for loss or damage, wherever happening.

Carrier—contract valuation—embezzlement—effect. The effect of a valuation clause in a contract of carriage, upon the carrier's liability, where loss has resulted from its negligence or that of its employees, was considered in the note to 1 L.R.A.(N.S.) 985, where it is pointed out that if the parties make a bona fide contract of valuation which the shipper agrees shall constitute the measure of recovery in case of loss, in consideration of special transportation rates, such contract will control even where the loss is caused by the carrier's negligence; but that if there is a mere arbitrary limitation of value placed upon the goods by the carrier, without any actual bona fide agreement with reference to valuation, the shipper is not confined in his recovery to the amount inserted in the shipping receipt.

This being so, an arbitrary limitation *a fortiori* should not control where the loss results from an act of conversion or theft by the carrier or its servant.

So, it is held in Adams Express Co. v. Berry & Whitmore Co. 35 App. D. C. 208, annotated in 31 L.R.A.(N.S.) 309, that a contract fixing, for purposes of transportation, the value of an article delivered to a carrier for that purpose, will not operate to relieve the carrier from liability to pay the full value of the article if it was embezzled by its agent.

Carrier—duty to intending passenger not at station. The few cases in point on this question support the decision in the South Carolina case of Mitchell v. Augusta & A. R. Co. 69 S. E. 664, annotated in 31 L.R.A.(N.S.) 442, holding that one who, although intending to board a car, is 1,235 yards from the station when the car arrives, cannot complain that it does not wait a sufficient time to enable passengers to embark before it proceeds on its journey, since, not being at the station, the carrier owes him no duty.

Contract—alteration—name of party. The rule of law that a change in the name of a party to any instrument merely for the purpose of correcting a mistake is an immaterial one, which will not affect the validity of such instrument, since such a correction does not alter the legal tenor or effect of the instrument, nor affect the liability of a party, was applied in the Nebraska case of Blenkiron Bros. v. Rogers, 127 N. W. 1062, holding an alteration to be immaterial where the promisee in a contract for the sale and delivery of grain corrected its corporate name from "Blenkiron Grain Company" to "Blenkiron Brothers, Incorporated," to which it had been recently changed, such erroneous designation being due to the mistake of the agent of the corporation, who had used an old blank in which the former name was printed.

The cases relating to alteration of instruments to correct a mistake in the designation of a party are discussed in the note which accompanies this decision in 31 L.R.A.(N.S.) 127.

Court—correcting record—appeal. The general rule is that the taking of an appeal does not deprive the trial court of the right to correct its record; that while an appeal deprives the trial court of jurisdiction of the case, it still retains jurisdiction of the record of the case. This rule, which is supported by an overwhelming weight of authority, is followed in the Iowa case of Kvamme v. Barthell, 118 N. W. 766, holding that a trial court may, upon proper notice and showing, correct its record which shows a ruling striking an amendment to the answer, so as to show that, as matter of fact, the amendment was not stricken.

The power of a trial court to correct its record after an appeal or writ of er-

ror is discussed in the note appended to this case in 31 L.R.A.(N.S.) 207.

Criminal law — impeaching accused — feigning insanity. The decision in Waller v. United States, 103 C. C. A. 302, 179 Fed. 810, holding that on cross-examination on a second trial the accused might be asked if he did not feign insanity before the court and jury on the previous trial, in which insanity was set as a defense, is in accord with numerous cases admitting evidence of similar character for the purpose of showing consciousness of guilt, and which are collated in a note appended to the report of the case in 31 L.R.A.(N.S.) 113.

Dower—conveyance in satisfaction of mortgage—effect. The conveyance by a man and wife of his land in satisfaction of a mortgage which they had executed on the property, in which the wife had renounced her dower, is held in the South Carolina case of Gainey v. Anderson, 68 S. E. 888, to operate, in the absence of express intention to the contrary, as a satisfaction of the mortgage, and to cause a reverter of the wife's dower interest, which she may enforce if it is not released in the deed.

This seems to be a case of first impression, but several analogous decisions are discussed in the note appended to the report of the case in 31 L.R.A. (N.S.) 323.

Estoppel—will—passing of estate. A mother is held estopped in McDowell v. McDowell, 141 Iowa, 286, 119 N. W. 702, to claim title to her son's property where, just prior to his death, she and his wife attended his bedside, and upon his stating that he wanted his wife to have his property, and asking his mother if that was satisfactory, she replied in the affirmative, in consequence of which he made no will or conveyance of the property.

The recent decisions upon the question of impressing the share of an heir, devisee, or legatee with a constructive trust because of his fraud in frustrating decedent's intention to give the property to a third person, are collected in the note appended to this case in 31 L.R.A. (N.S.) 176, which is supplementary to a note in 8 L.R.A.(N.S.) 698.

Evidence—parol—contradicting writing. The general rule that parol evidence is inadmissible to add to, vary, or contradict the terms of a written instrument, applies generally in cases where parol evidence is sought to be introduced to show the manner or means in which the executory consideration expressed in a written instrument for the payment of money is to be paid.

Thus it is held in Woodson v. Beck, 151 N. C. 144, 65 S. E. 751, that one sued upon a duebill given for the first premium of a life insurance policy cannot be permitted to show by parol that it did not embody the contract of the parties, but that, instead of undertaking to pay the amount called for, defendant had agreed to surrender an old policy, and pay a much smaller premium than that designated.

The decisions dealing with the admissibility of parol evidence as to the manner or means of paying a written contract not within the statute of frauds, purporting to be payable in money, are collected in the note appended to this case in 31 L.R.A.(N.S.) 235.

Gas—security for service—right to enforce. That a public service corporation may enforce a regulation exacting payment in advance in reasonable amounts, or requiring the deposit of security, is fully settled by the authorities.

But it is held in the Iowa case of Phelan v. Boone Gas Co. 125 N. W. 208, annotated in 31 L.R.A.(N.S.) 319, that a gas company will not be permitted to enforce a rule requiring security from unknown or irresponsible consumers before it will undertake to serve them, against one who had always been prompt the settlement of his accounts, but who disputed a bill and prevailed in the action to enforce it, and where it is evident that the rule was not resorted to in good faith, but from spite.

Note—rights of holder as collateral. The doctrine adopted by the Federal courts and in a majority of the states, as well as that of England and Canada,

is that an indorsee who takes a bill or promissory note in the usual course of business, before maturity, without notice of any infirmity, as collateral security for a pre-existing debt, is a bona fide holder for value, though there was no extension of time or other present consideration. This doctrine is known as the Federal rule. The courts sustaining the right of a holder to recover as against equities or defenses between the original parties do so, generally, upon the ground that, by becoming a holder of such an instrument through indorsement, he becomes a party to it, and as such assumes obligations in reference to the enforcement of the same.

Some states, on the other hand, maintain the doctrine that the holder of negotiable paper as collateral security for a pre-existing debt is not entitled to protection against existing equities and defenses. This doctrine proceeds on the theory that the holder parted with nothing in the nature of a new consideration when he acquired the collateral, and therefore is not injured by an impeachment of his rights or title thereunder. This rule, which introduced an exception in the general rule of law respecting negotiable paper, was first announced by Chancellor Kent in Bay v. Coddington, 5 Johns. Ch. 54, 9 Am. Dec. 268 (affirmed in 20 Johns. 637, 11 Am. Dec. 342), and is called the New York rule.

The Arkansas case of Exchange Nat. Bank v. Coe, 127 S. W. 453, annotated in 31 L.R.A.(N.S.) 287, holds in conformity with the Federal rule that the indorsee before maturity of a promissory note as collateral security for an existing debt is entitled to the rights of a holder for value.

This holding overrules conflicting *dicta* in Bertrand v. Barkman, 13 Ark. 159, and Bank of Commerce v. Wright, 63 Ark. 604, 40 S. W. 81.

Note—corporation—debt of officer—bona fide holder. Where an officer of a corporation makes its commercial paper payable to his own order, signs it as such officer, and transfers it in payment of an individual debt, it is held in the Kentucky case of Kenyon Realty Co. v. National Deposit Bank, 130 S. W. 965, that the transferee is not a bona fide purchaser thereof without notice, since the facts appearing on the face of the paper are sufficient to put him on inquiry as to its ownership.

The case law bearing on this question is presented in the note accompanying the report of this case in 31 L.R.A. (N.S.) 169.

Note—guarantor—release by extension of time. A guarantor of payment of a negotiable instrument, not being by the terms of the instrument absolutely required to pay the same, is secondarily liable thereon; and an extension of time to the principal debtor without his consent is held in Northern State Bank v. Bellamy, 125 N. W. 888, to operate, under the negotiable instruments law, N. D. Rev. Codes 1905, § 6422, as under the law formerly in force, to release him from liability.

This case seems to be the only one which has considered the effect upon a guarantor of a negotiable instrument, under the negotiable instrument law, of an extension of time to the principal or maker thereof. While it holds that a guarantor is not primarily liable, and hence is released by an extension of time, a distinction is made between a surety and a guarantor, and the question as to the release of the former by an extension of time is expressly reserved.

Analogous cases are discussed in the note which is appended to this decision in 31 L.R.A.(N.S.) 149.

Fictitious partnership—firm creditors—priority. The weight of authority, although there is a decided and irreconcilable conflict, seems to favor the view that the creditors of a business carried on by an individual under a partnership name have no right, in case of insolvency, to be paid out of the assets of the business in priority to individual creditors of the one carrying on the business.

Such is the view taken in the Virginia case of Johnson v. Williams, 68 S. E. 410, annotated in 31 L.R.A.(N.S.) 406, holding that creditors of a business carried on by an individual under a part-

nership name have no right, in case of a general assignment for their benefit, to be paid out of the assets of the business in priority to one who had received a chattel mortgage upon them, to secure the individual debt of the one carrying on the business, since the ostensible partner has no equities in such assets through which the claims of creditors of the partnership can be satisfied in priority to those of the individual partner.

School—separation of races—colored child. A child having no physical characteristics of a negro, but which has one sixteenth negro blood in its veins, and whose parents maintain the racial status of the negro, is held in the App. D. C. case of Wall v. Oyster, 31 L.R.A.(N.S.) 180, to be colored, within the meaning of a statute providing for the separation of white and colored children in the public schools.

The note appended to this case reveals that the courts have experienced much difficulty and some embarrassment in their efforts to determine the proportion of negro blood necessary to render one a "negro," "mulatto," or "person of color."

Smuggling—passing customs office. The question when the offense of smuggling is complete was considered in Rogers v. United States, 103 C. C. A. 408, 180 Fed. 54, annotated in 31 L.R.A.(N.S.) 264, holding that one bringing duitable goods into the United States is guilty of smuggling if he passes the customs office located at the wharf, and ignores hails from the customs officer, although he has not yet left the inclosure adjacent to the wharf, and claims that he intended to enter the goods at the main customs office in another part of the town.

Tax—foreign telephone company—domestic connections. A municipal corporation is held in the Virginia case of Southern Bell Teleph. & Teleg. Co. v. Harrisonburg, 69 S. E. 348, 31 L.R.A.(N.S.) 327, to have no power to tax a telephone company which has no franchise or property within its limits, but merely makes connections outside its limits with a local company, for long-distance service with the inhabitants of the municipality.

This decision is apparently one of first impression. It accords, however, with the rule that, unless specially provided by statute, a taxing district cannot tax for revenue a business carried on wholly outside its limits.

Telephone—discrimination—credit. Exacting from some patrons payment of rental in advance, while giving credit to others, is held in the Tennessee case of Vaught v. East Tennessee Telephone Co. 130 S. W. 1050, annotated in 31 L.R.A.(N.S.) 315, not to be a discrimination among patrons on the part of a telephone company, which will subject it to a statutory penalty provided for such discrimination.

Telephone—fixed charges—penalty for delayed payment. The question as to the right of a public service corporation to exact a charge in addition to the maximum rental fixed by the public, for delay in payment, appears to have been raised for the first time in the Washington case of State ex rel. MacMahon v. Independent Telephone Co. 109 Pac. 366, holding that the establishment in the franchise of a telephone company of a maximum monthly rental to be charged by it for service does not prevent its requiring the rentals to be paid in advance, and making an additional charge in case they are not paid before a certain specified day each month.

Cases illustrative of the principle involved in this decision are collected in the note accompanying the case in 31 L.R.A.(N.S.) 329.

Quaint and Curious

He loved the quaint and whimsical, and i'faith thought it no sin to smile.

About Dogs. Bob, a valuable bird dog, accustomed to make frequent trips between Germantown, Delaware, and Stockley, showed that he possessed unusual intelligence when he discarded his usual route down the railroad, and took to the country road, although it is somewhat longer, as soon as notices appeared along the tracks forbidding trespassing on railroad property.

Another story comes from North Carolina. It is said that when the vault of the People's Loan & Trust Company, at King's Mountain, was opened a few days ago, and the clerk was inside opening an inner safe, a bird dog wandered in, and, nosing around, picked up a package that was lying on the floor, and walked out with it. The clerk did not see him. About a half block away he dropped it on the sidewalk, and proceeded to tear the paper open with his teeth. His actions attracted the attention of someone passing, and he took the package away from him, and found that it contained a deposit ticket and $18 in silver and greenbacks.

As soon as the package was taken away from the dog, he evidently thought that he had done something criminal, for he struck out post haste down the street and went upstairs to a law office as if for a consultation.

Law and Legs. A vender of artificial legs recently sent a constable with a writ of replevin to take possession of a pair of legs which he alleged an Indiana man had failed to pay for in full. The unfortunate legless defendant, thus deprived of means of locomotion, went to bed to await the result of the replevin proceedings. The vender declared that he would introduce, as expert witnesses to fix the value of the property, two one-legged women and four legless men.

In speaking of the relative value of a man's right and left leg, a lawyer said recently: "Not long ago I was called upon to conduct the case of a man who had lost his left leg in a railroad accident. He was laid up in the hospital for several weeks. While there the utter uselessness of his right hand caused much comment among the doctors and nurses. Other left-handed patients they had met were able at least to fight flies, but my client's right hand wasn't even fit for that.

"The case came to trial and the jury awarded him $500 damages in excess of what he had asked for, because, said the foreman, 'he is left-handed.'

"The next day I stumbled on my man in a restaurant and found him stoking up with his right hand.

" 'That is all right,' said he. 'It isn't a new accomplishment. I could do it all the time. Can use one hand as well as the other, always could, but after I lost my left leg I concluded to let my right hand take a vacation. You see, I know the ways of juries. I cannot follow their reasoning, but I have studied their verdicts, and I have observed that while the right leg is considered of more value to the average man than his left leg, the left leg fetches a boom price if it belongs to a left-handed man. I can't see the connection, but juries can. You heard what that jury of mine said? Well, they always reason that way.' "

The failure of an Italian engraver and bookbinder to grow a new leg while temporarily abroad threatened him with permanent exile. This man was sixty years old and had resided in this country for sixteen years. He was never naturalized. He has living here a wife and six children, and he has always made a good living for them in his trade,—a trade in which two hands are more useful than two legs.

Six years ago he developed gangrene in one of his legs, and the leg was amputated. Subsequently he carelessly went to Italy to see his mother. He returned to this country last December on the steamship Cincinnati, and was immediately held up at Ellis Island as an alien who had only one leg and was therefore likely to become a public charge. An order for his deportation was issued, but counsel secured a writ of habeas corpus. Judge Holt dismissed the writ, holding that the court has no authority to interfere with the deportation orders of the immigration authorities. But Judge Holt says:

"I consider that if this order of deportation is carried out it will be an act of cruel injustice. If this alien had remained in this country he probably never would have been molested. If he had not lost his leg he probably would not have been detained on his return. No offense is charged against him. It is proposed to deport him because he has suffered a pitiable misfortune and notwithstanding a proposition to give a satisfactory bond, which would appear to be a complete protection to the government from his becoming a public charge. But the immigration acts confer exclusive power upon the immigration officials to determine such questions, and the courts, so long as the procedure prescribed by the immigration acts and the rules established for their administration is substantially followed, have under the decisions of the United States Supreme Court, no jurisdiction to interfere. I am therefore compelled to dismiss this writ. But I desire to express the hope that the immigration authorities will reconsider this case. I cannot believe that, on a candid reconsideration of this record, this man, who is charged with no offense, will be sent away because he has suffered a grievous calamity and has been denounced by a malicious enemy, to pass his last years and to die in a distant land, far from his wife and children and from the home in this country in which he has lived a blameless life for so many years.

A Relic of Yore. The old-fashioned green bag that lawyers carried to court in the long ago—the kind Dickens describes in David Copperfield and in the case of Jarndyce and Jarndyce—made its appearance at the city hall in Kansas City a few months ago, when Judge John G. Park used it to carry a voluminous mass of legal papers to the supreme court at Jefferson City, where the city limits' extension case was to be argued. A big suit case which Judge Park also took along on the noon train was not large enough to hold all of the documents.

"You don't see many of the old green bags these days," Judge Park said. "I don't know of any other in this city. It's very handy, however."

Many stories cluster around that ancient emblem of the profession,—the green bag. When Erskine was in the full tide of success as a barrister, some of his fellow lawyers, wishing to annoy him, hired a boy to ask him, as he was going into court with his green bag stuffed with briefs, if he had any old clothes for sale.

"No, you young rascal!" said Erskine, "these are all new suits."

Telescoped. A western editor who was full of hard cider, got a sale bid and a marriage so badly mixed that it would tax the ingenuity of even a lawyer to untangle it. The description ran as follows: "William Smith, the only son of Mr. and Mrs. Josiah Smith, was disposed of at public auction to Lucy Anderson, on my farm 1 mile east of here, in the presence of seventy guests, including, to wit: Two mules, twelve head of cattle. Rev. Jackson tied the nuptial knot, averaging 1,250 pounds on the hoof. The home of the charming bride was tastefully decorated with sewash clam-spadee, one sulky rake, one feed grinder, one set of double harness, nearly new, and just before the ceremony was pronounced Mendelssohn's inspiring wedding march was given by one milch cow to be fresh next April, carrying a bunch of flowers in her hand and looking charming in a gown made of a light spring wagon, three boxes of apples, three racks of hay, one grindstone, *mousline de soie*, trimmed with about 100 bushels of spuds.

"The bridegroom is well known and a popular young man, and has always stood well among society circles of twelve Berkshire hogs, while the bride is an accomplished and talented school teacher of a splendid drove of Poland Chinas,—pedigrees if desired.

"Among the beautiful presents were two sets of silver knives and forks, spring harrow, one wheelbarrow, go-cart, and other articles too numerous to mention. The bridal couple left yesterday on an extended trip. Terms: Twelve months' time to responsible parties; otherwise spot cash. Lunch will be served at the stable. After this, Mr. and Mrs. Smith will go to housekeeping in a cozy little home at the corner of Mail and Dr. R. L. Cranby, auctioneer.

A Phonographic Will. Shortly before the death of Hodson Burton, of Buchanan, Michigan, about five years ago, says the New Orleans Item, he talked into the horn of a phonograph and had the record preserved. It was placed in the hands of his lawyer. The lawyer concealed the record in his safe. Not long after Burton died. He was of great wealth. When his will was opened, there was found, amidst other information, the statement that he had buried a large sum of gold, comprising the bulk of his estate, in a secret place, and that the location of this place was recorded on the phonograph record, which was not to be read until five years after his death. The five years were up a few days ago. The family gathered in a stately circle in the home of one of the members of the family. The lawyer came in with careful and important tread, bearing the phonograph record. He tripped on a piece of carpet. The record flew out of his hand and was broken into tiny bits. It cannot be put together again. Now, what is to be done about the matter? The lawyer is not responsible for a natural accident. The family can't get hold of the dead will-maker to tell him what it thinks of eccentric wills. Worse still, the family can't get hold of the gold. The moral of all this is, don't make eccentric wills.

Left It to the Lord. A lawyer traveling through the Central West, some years ago, found himself at a county seat while a term of court was being held. He attended a number of sessions, and was highly pleased with the promptness and apparent justice of the verdicts. In one instance, where a man was accused of stealing a pig the jury announced an acquittal within five minutes after retiring. The visiting attorney subsequently met the foreman of the jury, a robust, rosy-cheeked man, who presented a marked contrast to his cadaverous, saffron-colored compeers. He congratulated the foreman on the record the jury had made.

"Stranger," was the reply, "the Lord never makes any mistakes."

"I don't understand you," said the lawyer. "I don't see the connection."

"Well, take that pig case for an example," answered the foreman. "The jury were about evenly divided, and both sides were likely to be obstinate and unyielding. So, I suggested that we leave the matter to the Lord. This was agreed to, and it was further arranged that a cane should be placed upright and that we should be guided by the way in which it fell,—if to the right, for the plaintiff; if to the left, for the defendant."

"The result seems to have been commendable," commented the lawyer.

"Yes," assented the foreman, "for you see, I held the cane."

Judicial Notice. A "law day" at Pepperville in the good old days of good old Kentucky, writes William Herndon, Esquire, of Lancaster, Kentucky, was almost an event in one's life. The fun at this monthly court was furnished by counsel "the Colonel" and Doolin the "Beaver," as he called himself. The 'Squire's immense dignity and austerity on the "bench" unintentionally on his part, greatly enhanced the merriment, and made that which was already ludicrous, even more so. Lige Buck, the contrariest man in Contraryville, who was never "licked, because he was too contrary to holler 'nuff," was on trial for cleaning out the crowd in the court room. "Where was Johnson during the

fight?" asked the Beaver of One-Eyed Riley, who, as usual had seed the hole thing.

"Out in the yard."

"What was he doing out in the yard?"

"Jest a fle-an-a-kin around."

"What do you mean by fle-an-a-kin around?" demanded the Beaver hotly.

The Colonel inflamed the 'Squire up to blood heat by remarking sarcastically, that the court would certainly not allow the intelligent one-eyed witness to enlighten a *town* lawyer on such a simple word as that. The 'Squire, scarcely able to restrain himself from a physical assault on the Beaver, snorted out that a lawyer who didn't know the meanin' of that word didn't have sense enough to practice law at Pepperville. So the word has never been judicially defined up to date. But those versed in Pepperville and Contraryville lore say that it means hoppin' about like a flea.

Operatic Argument. Singing in a husky voice, "Home, Sweet Home," records the Springfield, Missouri News, the attorney for the defense closed his argument in a recent murder trial. His song trembled on his lips, and brought tears to the eyes of all the jurors, the defendant, and the crowd who packed the court room.

It is not to be doubted that the song brought tears to the jury. To hear a lawyer singing in a murder-trial argument would be enough to make an ordinary angel weep. The defendant killed off a love pirate, and, in pleading for her, the lawyer dropped into poetry and song. Home, Sweet Home seems to be quite effective, but what would have happened if the prosecution had sung, "I Love, I Love My Wife, but Oh, You Kid?"

This turn in American jurisprudence promises to be of importance. All up-to-date law schools will have to put in a vocal music department.

Next we will hear of the attorney general singing sweetly to the "unreasonable trusts," "Pack Your Things and Go."

Detection by Kinetograph. Kinetograph views taken during the recent champagne riots in France are proving useful adjuncts to justice. The public prosecutor at Rheims had a number of the views displayed before eyewitnesses of the riots, with the result that many of the participants were recognized and several arrests have been made. Warrants have been issued against persons who, in the pictures, were shown to have insulted the Army, as well as against many who participated in the actual rioting. Several persons who had already been arrested and imprisoned at Rheims, but denied that they had any part in the riots, were plainly recognized in the views.

Why should not cameras adapted to taking moving pictures form part of the equipment furnished police or troops who are called out to suppress rioting? The picture films would preserve, with unbiased accuracy, a history of the event, and serve not only to identify offenders, but to portray exactly what they did. The films would constitute witnesses which would not run away, could not be bribed or bullied, and would not be actuated by such human motives as pity or revenge. It is true that they might be destroyed or purloined, but that is a possibility to which any form of demonstrative evidence is subject.

Dry as Dust. In Jones v. Jones, 223 Mo. 424, 123 S. W. 29, 25 L.R.A.(N.S.) 424, a trust for the benefit of sons, conditioned on their discontinuance of their intemperate habits, is appropriately characterized as a "dry" trust.

Spoons and Dynamite. In Knorpp v. Wagner, 195 Mo. 637, 93 S. W. 961, the court said: "The length of that particular spoon handle is immaterial, though it is the personal view of the writer that one who handles dynamite with a spoon needs one with a long handle,—the longer, the better. If authority is necessary for this judicial *dictum*, it may be found in the Danish proverb to the effect that he who eats out of the same dish with the devil needs a long spoon."

New Books and Recent Articles

"New York Bar Examination Questions and Courses of Study." By Franklin M. Danaher. 5th ed. Law Canvas, $4.

"Wetmore's Citations." (South Carolina) $7.50. Supplement, $2. Wetmore's Citations and Supplement, $8.

"Trial Evidence." By William Reynolds. (Pocket edition) $3.50.

"Forms of Law & Business." By W. S. Church. (For Pacific Coast and the Western States.) 1 vol. Buckram, $7.50.

"Civil Form Book for Texas." By J. W. Moffett. 3d ed. $6.

"The Law of Municipal Corporations." By John F. Dillon. 5th ed. 5 vols. Law Canvas, $32.50.

Green's "Michigan Practice." 3d ed. 3 vols. $19.50.

"United States Statute Citer-Digest." Annotations giving subsequent history of U. S. Statutes, and cases, classified showing legal construction by all Federal courts. By Henry C. Ruen and Edward L. Dwight. 1 vol. Russian Tan binding, $12. Supplements, $3 per year.

Booth's "Street Railway Law." 2d ed. 1 vol. Buckram, $6.50.

Nellis on "Street Railways." 2d ed. 2 vols. Buckram, $13.

"Federal Corporation Tax Law." By Thomas G. Frost. Buckram, $4.

AMERICAN LEGAL NEWS.

The May number of the American Legal News comes to us in an improved and attractive form. It is now under the general and editorial management of Mr. Frederick R. Austin, whose legal experience and training well qualify him for the work which he has undertaken. It may be confidently predicted that this well-known magazine will now enter upon a career of increased usefulness.

Recent Legal Articles in Journals and Magazines

Animals.

"Keeping of Savage Animals."—32 Australian Law Times, 73.

"Pound Law."—75 Justice of the Peace, 206.

Annuities.

"Annuities Charged on Corpus."—32 Australian Law Times, 61.

Appeal.

"The 'Notice of Objection' in Revision Courts."—27 Law Quarterly Review, 75.

Arbitration.

"International Arbitration."—47 Canada Law Journal, 326.

"The Declaration of London."—27 Law Quarterly Review, 9.

Attorneys.

"Examining a Candidate for License."—11 The Brief, 119.

"Undertakings Given by Solicitors."—31 Canadian Law Times, 372.

Bills and Notes.

"The Negotiable Instruments Law."—28 Banking Law Journal, 385.

"The Uniform Negotiable Instruments Law; Is It Producing Uniformity and Certainty in the Law Merchant?"—59 University of Pennsylvania Law Review, 532.

Capitalism.

"Wall Street: How Morgan Built the Money Power."—McClure's Magazine, June 1911, p. 185.

China.

"The New Chinese Currency."—193 North American Review, 816.

Civil Service.

"The Story of a Post-Office Clerk."—McClure's Magazine, June 1911, p. 178.

Commerce Court.

"The Commerce Court."—18 Case and Comment, 9.

Congress.

"Wit and Humor in Congress."—McClure's Magazine, June 1911, p. 210.

Constitutional Law.

"Religious Liberty and Bible Reading in Illinois Public Schools."—6 Illinois Law Review, 17.

"Prerogatives of the Crown and Privileges of the People."—47 Canada Law Journal, 286.

"The New Stateism."—193 North American Review, 808.

Contempt.

"Powers of Courts to Punish Contempts, Considered with Special Regard to Courts of Maryland and Virginia."—17 Virginia Law Register, 102.

Contracts.

"Is a Verbal Lease for the Period of One Year or More, Commencing in the Future, within the Provisions of the Statute of Frauds?"—17 Virginia Law Register, 97.

"Remedies That are of the Essence of Contracts."—42 National Corporation Reporter, 567.

"Options of Purchase Contained in Leases."—31 Canadian Law Times, 367.

Corporations.

"Ethics and the Corporations."—6 Illinois Law Review, 54.

"Executory Ultra Vires Transactions."—24 Harvard Law Review, 534.

"The State's Power over Foreign Corporations."—9 Michigan Law Review, 549.

Court of Claims.

"The United States Court of Claims."—18 Case and Comment, 21.

Courts.

"The Genesis of the Supreme Court."—18 Case and Comment, 3.

"The Reorganization of the Federal Judicial System."—18 Case and Comment, 13.

"Offences Committed on Board Ship."—75 Justice of the Peace, 205.

Criminal Law.

"Conference on Reform of Criminal Law and Procedure at Columbia University."—43 Chicago Legal News, 344.

"The Prevention of Crime and Reformation of Criminals."—36 Law Magazine and Review, 315.

"The Serious Absurdities of the Criminal Courts."—22 The World's Work, 14,516.

"Consecutive Terms of Imprisonment."—75 Justice of the Peace, 241.

Customs Appeals Court.

"The Court of Customs Appeals."—18 Case and Comment, 9.

Damages.

"Liquidated Damages and Estoppel by Contract."—9 Michigan Law Review, 588.

"Damages for Breach of Contract for Non-delivery or Nonacceptance of Shares."—47 Canada Law Journal, 281.

Descent and Distribution.

"Inheritance."—15 Dickinson Law Review, 235.

Divorce.

"Divorce vs. Injustice to Children."—17 Kansas Lawyer, 286.

Evidence.

"Presumption of Mailing Letters and of Their Receipt."—42 National Corporation Reporter, 566.

Government.

"How a Business Man Would Run the Government."—22 The World's Work, 14,481.

Hacks.

"Liabilities of Cab Proprietors."—75 Justice of the Peace, 218.

Highways.

"The Problem of Urban Traffic."—75 Justice of the Peace, 230.

Hospitals.

"Hospital Social Service."—Harper's Magazine, June 1911, p. 31.

Imprisonment for Debt.

"The Nature of Imprisonment for Non-payment of Rates."—75 Justice of the Peace, 217.

India.

"The Native States of India."—27 Law Quarterly Review, 83.

Infants.

"Liability of Infant for Negligence."—42 National Corporation Reporter, 566.

Insurance.

"The Incontestable Life Policy—May It Ever be Contested?"—17 Virginia Law Register, 1.

"'Get Rich Quick' Insurance from the Inside."—22 The World's Work, 14,472.

Jurisprudence.

"Amalgamation of Law and Equity."—32 Australian Law Times, 62.

Jury.

"On the Summoning of a Jury."—36 Law Magazine and Review, 308.

"Jury Trials in Contempt Cases."—15 Law Notes, 26.

Landlord and Tenant.

"Assignment of Lease to Corporation."—32 Australian Law Times, 63.

Law Schools.

"Early Law Schools in London."—36 Law Magazine and Review, 257.

Lorimer.

"The Lorimer Case."—193 North American Review, 871.

Marriage.

"A Proposed Uniform Marriage Law."—24 Harvard Law Review, 548.

Master and Servant.

"New York Workmen's Compensation Act Unconstitutional."—15 Law Notes, 24.

Mines.

"Canadian Mining Law."—31 Canadian Law Times, 376.

Mohammedan Law.

"A Historical Study of Mohammedan Law."—27 Law Quarterly Review, 28.

Monopoly.

"Extraterritorial Effect of the Sherman Act."—6 Illinois Law Review, 34.

Panama Canal.

"The Panama Canal and Sea Power in the Pacific."—The Century Magazine, June 1911, p. 240.

Parties.

"An Agent's Right to Sue upon Contracts."—59 University of Pennsylvania Law Review, 517.

"Intervention in Theory and in Practice."—6 Illinois Law Review, 1.

Patents.

"The Progress of Japanese Patent Law."—27 Law Quarterly Review, 60.

Peace.

"Anglo-American Peace."—The Century Magazine, June 1911, p. 306.

Pleading.

"Pleading Estoppel."—9 Michigan Law Review, 576.

Powers.

"Release and Discharge of Powers."—24 Harvard Law Review, 511.

Preliminary Examination.

"Examinations before Trial—Recent Cases."—25 Bench and Bar, 62.

Principal and Agent.
"Compensation of Unfaithful Agents."—72 Central Law Journal, 396.
"Implied Warranty of Authority."—31 Canadian Law Times, 363.
Real Property.
"Burgage Tenure in Mediæval England."—27 Law Quarterly Review, 43.
Recall.
"The Recall of Judges."—42 National Corporation Reporter, 445.
Senate.
"Some Observations on the Proposition to Elect United States Senators by the People."—23 Green Bag, 229.
Taxes.
"The Corporation Tax Decision."—42 National Corporation Reporter, 445.
The Maine.
"The Destruction of the Battleship 'Maine.'"—193 North American Review, 831.
Tips.
"The Law Relating to Commissions and 'Tips.'"—36 Law Magazine and Review, 302.
Trademarks.
"The Transfer of Trade Marks and Trade Names."—6 Illinois Law Review, 46.
Treaties.
"Relation of Treaties and Armament."—193 North American Review, 801.
Trespass.
"Trespass in Pursuit of Game."—75 Justice of the Peace, 242.
Trusts.
"Notice to Trustees."—32 Australian Law Times, 75.
War.
"The Mexican Revolution."—The Pacific Monthly, June 1911, p. 609.
Waters.
"Support of Waterworks."—75 Justice of the Peace, 229.
Wills.
"Proposed Ante-Mortem Probate of Wills."—15 Law Notes, 26.
Women.
"The English Lady in Political Life."—193 North American Review, 905.
Woods.
"Captain Micajah Woods, Leader of the Virginia Bar."—23 Green Bag, 223.

DeTocqueville says, "In the nations of Europe, the courts of justice are only called upon to try the controversies of private individuals; but the Supreme Court of the United States summons sovereign powers to its bar." Sir Henry Maine considered it "not only the most interesting but a virtually unique creation of the founders of the Constitution." Lord Brougham esteemed it "the very greatest refinement of social policy to which any state of circumstances has ever given rise, or to which any age has ever given birth." And John Stuart Mill declared the court "the first example of what is now one of the most prominent wants of civilized society, a real International Tribunal." Consequently, it would not be inaccurate to conclude that the Supreme Court is the most distinctively international court the world has thus far seen, and to suggest that no new court of international justice could, though of the amplest possible jurisdiction and dignity, study the origin, character, growth and working of this American model of judicature without inestimable compensation.—Hon. A. J. Montague.

Judges and Lawyers

Notable men on the bench and at the bar.

John K. Shields

Chief Justice of Tennessee

HON. JOHN K. SHIELDS

The present Chief Justice of Tennessee, John K. Shields, was unanimously chosen to that high position for the full term of eight years on September 12, 1910, by the other judges of the supreme court of that state.

Chief Justice Shields comes of pioneer lawyer and judicial stock. His father, Judge James T. Shields, one of Tennessee's most distinguished lawyers, refused a place on the supreme bench of Tennessee, which he often adorned by special appointment, preferring his home life and general practice, which extended over a large part of east Tennessee.

The present chief justice is of Scotch-Irish ancestry,—was born on the farm (Clinchdale) in Grainger county, near Bean's station (a blockhouse in pioneer days) which has belonged to the Shield's family for more than a hundred years. Here his father had his law office, where his clients from a dozen or more counties came to him. In this law office, or with his father on the circuit, Chief Justice Shields studied law, and was admitted to the bar when he had barely attained his majority,—becoming a partner of his father. He came to the bar a well-grounded lawyer, and at once took high rank among a bar notable for strong and able lawyers. His practice was general, and grew to such an extent that, for the convenience of clients, it was necessary for him to open an office at the railroad center of upper east Tennessee, Morristown.

In 1893 the legislature created an additional chancery division in east Tennessee, and, though he was not an applicant, he was induced by Governor Turney, a former chief justice of Tennessee, to accept the appointment of chancellor, which office he held until the regular election in August, 1894, when he declined to stand for election, although such had been his record as chancellor it is probable he would not have been opposed in a division where the political majority was against him.

Chief Justice Shields is a Democrat in politics, and, prior to his elevation to the bench, took an active interest in politics.

In 1902 he was the Democratic nominee for the supreme court of Tennessee from the eastern division of the state, to succeed former Chief Justice Snodgrass, —and was elected for a term of eight years, along with Judges Beard, McAlister, Neil, and Wilkes. The chief justice of the supreme court of Tennessee is elected by the judges from their own number, and in September, 1902, the Honorable W. D. Beard was elected for eight years to that position.

During his first term on the bench

of the supreme court, the reputation of Judge Shields as a lawyer and judge steadily increased, and he soon came to be regarded as one of the strongest, most fearless, and ablest judges who have adorned that bench.

Notable among the opinions rendered by him during this time are those in the Muncie Pulp Company Case, affecting the western boundary of the state; the Standard Oil Case, construing the state anti-trust statute; the Morrison Case, sustaining the statute requiring separation of the races in street cars; cases affecting the validity of the 4-mile law, and the jurisdiction of the chancery court to enjoin criminal prosecutions; his dissent in the celebrated case of Dr. Feist, convicted of murder in the first degree and reversed by a majority of the court, and the famous Cooper Case, where the Coopers (father and son) had been convicted of the murder of Senator Carmack. In this last case Justices Shields, Neil, and McAlister affirmed the conviction of the elder Cooper, and Judges Shields and Neil dissented from the opinion of Judges Beard, Bell, and McAlister, reversing the judgment against the younger Cooper.

In the spring of 1910, all the judges of the supreme court had announced their candidacy for renomination at the hands of the Democratic party. It had always been customary in Tennessee, in both political parties, to nominate the judges by a convention, separate and apart from any political office; but in 1910, the then Governor (Patterson) of Tennessee was in control of the machinery of the Democratic party and was extremely desirous of having the Cooper Case, above referred to, reversed. The Democratic Executive Committee, under the control of the governor, promulgated a primary plan, including both judicial and political offices, which at once was recognized as intended to affect the judges of the supreme court in their decision of the Cooper Case, then pending before it; but the judges proceeded to decide the case, taking their own time, and basing their decision upon what they conceived to be the law and the facts. And immediately thereafter, Judge Shields, along with Judge Neil and Chief Justice Beard, announced that they would not submit to the primary plan which had been directed at the court, but would appeal directly to the people of the state. On May 18, 1910, a convention composed of more than five thousand representative Democrats met in Nashville, and indorsed the candidacy of Judges Shields, Beard, and Neil, and nominated along with them Chancellor D. L. Landsden and Grafton Green, Esq., a prominent member of the Nashville bar,—thus filling out the ticket. This was known as the "Free Judiciary" ticket, as against the "Patterson nominees." The Republican party put no ticket in the field, and indorsed the Free Judiciary ticket, and after a contest unparalleled in bitterness in the annals of Tennessee, Judge Shields and his associates were elected by majorities ranging from 40,000 to 50,000. This campaign was known as the "Free Judiciary Contest," and from the beginning, Judge Shields was recognized as the leader of the movement, to free the courts from the control of partisan politics. When the court organized in September after the election, Judge Shields, as above stated, was selected by his associates as chief justice for the full term of eight years from September 12, 1910.

It may be said of him that his wide general practice prior to his elevation to the bench specially fitted him for the onerous duties of a judge of the supreme court. That he is fearless as a judge is recognized; and his opinions, both oral and written, stamp him as a lawyer and judge of wide and varied attainments. No more forceful and exhaustive opinions are to be found in the reports of Tennessee than those of Chief Justice Shields, covering the widest range of subjects, from grave questions of constitutional law, to questions of pleading and practice.

TAFT APPOINTS YOUMANS

President Taft has appointed Frank A. Youmans of Ft. Smith, Arkansas, United States judge for the western district of Arkansas. He studied law in the office of Judge B. B. Battle and has been in active practice since 1886. He served as assistant United States district attorney for eight years.

SOUTH CAROLINA'S CHIEF JUSTICE

HON. IRA B. JONES

Chief Justice Jones is of Scotch-Irish ancestry, and was born in Newberry, South Carolina, on December 29th, 1851; his inheritance being described by the gentleman nominating him to the supreme court as "a good name and an honest character." On this foundation he has built so well that he now occupies the highest judicial position in the gift of his native state.

The early years of his life were spent in Newberry, where he entered the Lutheran College and remained two years. In 1868, he entered the junior class of Erskine College, and graduated in the class of 1870. Here he distinguished himself as an orator and debater. His *alma mater* not long since conferred upon him the degree of Doctor of Laws in recognition of his eminence as a jurist and of his great reputation as a judge.

Chief Justice Jones was admitted to the bar when twenty-one years old, and since that time has been prominently identified with his profession. His position at the bar was an enviable one. Before he was elected to the supreme court, his services were largely in demand by the state. In the celebrated cases in reference to the railroad taxes, which Governor Tillman pushed so vigorously, Chief Justice Jones was chief counsel of the attorney general, and his advice was most valuable.

The public services of Chief Justice Jones, however, have not been limited to the field of the law. In 1890 he was elected a member of the state house of representatives from Lancaster. He immediately took a prominent part in the deliberations of that body, and was appointed chairman of the ways and means committee, and by common consent was the acknowledged leader of the house. He subsequently became speaker of the house. By his uniform courtesy, kindness, and fairness, he received the approbation of all factions and parties. He filled this position until January 30, 1896, when he was unanimously elected associate justice of the supreme court.

In the preceding year he had been chosen a member of the constitutional convention, and acted as vice-president of that body. He took a prominent part in its deliberations, and there, as he had already done in the legislative field, he placed his tried abilities and wide learning at the service of the state.

On the bench his conduct has been such that the bar of his home county could refer to him as one who, "by his high Christian character, his keen sense of justice, his uniform courtesy, his close attention to his duties, the clearness and logic of his decisions, has won for himself the admiration of the bar of our entire state, and a high rank among the distinguished jurists of the nation."

"Chief Justice Jones possesses a mind," writes Mr. U. R. Brooks in his valuable South Carolina Bench and Bar, "marked by great fairness, vigor, and acuteness. His opinions are clear and to the point. His grasp is such that no complication of details embarrasses him. Quick of comprehension, almost unerring in judgment, with admirable power of demonstration, he sees lucidly, and makes himself understood in every opinion he writes. Honesty, sincerity, and truth are the very essence of his nature."

In educational matters he has always been foremost. He was largely instrumental in securing the establishment at his home town of Lancaster of a graded school, which has assumed a high position among such schools in the state.

At the opening of Winthrop College he took a prominent part in the laying of the corner-stone exercises, delivering the dedicatory address.

Two years ago he delivered the oration at the unveiling of the Confederate

monument at Lancaster, South Carolina. Perhaps the beauty and vigor of his style and the fine poetic feeling of the man cannot be better illustrated than by two extracts from that address. He said in part: "God works in mysterious ways to perform His wonders. The germs of the flowers and evergreens which bedeck this monument to-day rested long before in the soil, awaiting this hour to fulfil their most perfect mission. . . . The sentiment which prompts people to erect monuments in recognition of lofty character, or effort, or achievement is noble and ennobling. No son can live a worthy life who does not honor his father. The so-called New South is great because its roots are in the Old South. And though we readily grant that the Confederate soldier was wrong, considered from the standpoint of expediency and the present and future greatness of these United States, he was everlastingly right in his heart, and he defended his conception of right with unsurpassable courage and devotion. What glory could the North take in her soldiers if they merely conquered men of whom the South should be ashamed? The more we laud the chivalry of the men of the South, the more we respect the tenacity, skill and courage of the men of the North. The gigantic struggles and achievements of both armies inspire us all, as Americans, with greater pride of race and country."

NEW JUDGE OF INTERNATIONAL COURT

The designation by the State Department of Mr. Pierre Crabites to be the American judge of the international court, or mixed tribunal of Egypt, confers a distinguished honor on one of the ablest of the younger members of the Louisiana bar.

It is not easy to find a person suited to this position, for not only must he be properly grounded in the principles and practice of the law, but he must be an accomplished linguist as well as a citizen of high character and standing. Mr. Crabites not only fills every professional requirement for the post, but he will, through his character and social equipment, do honor to the nation and his state.

CHIEF JUSTICE OF MONTANA

HON. THEODORE BRANTLY

Theodore Brantly, present chief justice of the supreme court of Montana, has had his official residence in Helena for more than twelve years.

He was born at Lebanon, Tennessee, on February 12, 1851. He gained his primary education in the field schools of Wilson and Rutherford counties in that state, during the Civil War. He graduated from the Southwestern Presbyterian University, at Clarksville, in June, 1874. After teaching for several years he entered as a law student at Cumberland University, at Lebanon, graduating in 1881. He practised his profession at Lebanon until 1883. He then removed to Lincoln, Illinois, where he taught Latin and Greek until 1887.

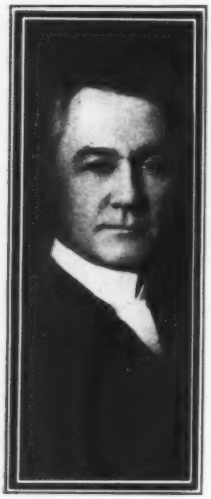
Having been offered a position in the college at Deer Lodge, Montana, he accepted and taught there during the years 1887 and 1888. In 1888 he was admitted to the bar of Montana, and practised law at Deer Lodge until 1892, when he was elected judge of the third judicial district. He was re-elected in 1896. In 1898 he was elected to the court over which he has since presided, and is now serving his third consecutive term.

He was married in June, 1891, and has a residence in Helena. His family consists of his wife, two sons, and a daughter. In politics he is a Republican, but has never been an active partisan.

COL. STOLL DIES

Col. Walter R. Stoll, a well known lawyer of Cheyenne, Wyoming, died suddenly on June 2nd. He was one of the leading orators of the state.

CHIEF JUSTICE OF OKLAHOMA



HON. JOHN B. TURNER

Under the system of rotation employed by the state supreme court of Oklahoma in selecting the chief justice, Judge John B. Turner, of Vinita, in January last became chief justice, to serve until his term expires in January, 1913.

Judge Turner is a native of Robertson county, Tennessee, where he was born on August 13, 1860. His father was a soldier in the Confederate Army, was taken prisoner and held in Chicago until the close of the war. His sons went to Chicago to join their father, and remained in that city a number of years after the War closed.

Judge Turner was educated in the State University at Knoxville, and was admitted to the bar at Linneus, Linn county, Missouri, in 1883. In 1889 he located in Fort Smith, Arkansas, and six years later in Vinita, Oklahoma, which is still his residence. With the coming of statehood to Oklahoma, he was elected one of the five members of the state supreme bench, and was lucky in drawing the long term. All other four members have completed their terms and been re-elected.

Judge Turner rendered the recent opinion of the court that the election held in June, 1910, whereby the state capital was located at Oklahoma City was null and void, for the reason that the measure voted upon was not a legal measure. He went against the opinion of Justice M. J. Kane, however, that the enabling act of a state is binding, Chief Justice Turner instead holding to the more state rights' doctrine, that the provision of the enabling act locating the temporary capital at Guthrie until after 1913 was not binding.

IDAHO'S ATTORNEY GENERAL

HON. D. C. McDOUGALL

Honorable D. C. McDougall was born in New York in 1864. His father was prominent in the politics of that state and was a close friend of Roscoe Conkling. He was a member of the legislature which first elected Roscoe Conkling to the United States Senate.

He later removed to Illinois, and there the subject of this sketch attended the public schools and normal school, and at the age of nineteen began teaching. He followed this occupation for five years, and then entered the Law School of the Boston University, at Boston, Massachusetts, from which he graduated in the class of 1889. He returned to Illinois, and was admitted to practise before the supreme court of that state in 1890.

In the same year the future Attorney General went West and began the practice of his profession at Malad City, Idaho, where he has since resided. He was admitted to the supreme court of Idaho and to the United States district and circuit courts for Idaho in 1891, and was later admitted to the Supreme Court of the United States. He was four times elected and served as county attorney of Oneida county. Mr. McDougall has always been a Republican. Naturally of a very methodical nature, he gives to all his work careful and systematic study, and performs it after elaborate and complete preparation.

During his first term of office, he prepared and presented thirty-two cases in the supreme court, of which all but five were decided in favor of the state. He is now serving his second term as Attorney General, having been re-elected in November last.

The Humorous Side

"I am persuaded that every time a man smiles—but more so when he laughs—it add something to this fragment of life."—Sterne.

In Practice. "The Hague has done much toward promoting peace in the world."

"Yes," replied Miss Cheyenne, "and so has Reno."—The Washington Star.

Caudal Earmarks. A Dutchman was summoned in court to identify a stolen hog. On being asked by the lawyer if the hog had any earmarks, he replied: "Te only earmarks dot I saw vas his tail vas cut off."

By Reflected Authority. An old settler out West, who was elected justice of the peace, couldn't raise enough to pay an officer for swearing him in; so he stood up before a looking-glass and qualified himself.

Again the Banana. The lawyer fell,
and tore his clothes,
And the mishap made him feel
That, as the phraseology goes,
He'd lost a suit on appeal! (April Lippincott's.)

No Obstruction. In the course of a trial, at Waterbury, Connecticut, the examiner was trying to get the topography of the country and the relative situation of objects. The witness was asked, "Which way does the road run past your house?" The reply was, "Both ways, your Honor, up and down."

Ample Apology. An Irish lawyer once addressed the court as "gentlemen," instead of "your Honors." After he had concluded, a brother of the bar reminded him of his error. He immediately arose and apologized thus: "May it please the court, in the heat of debate I called yer Honors, gentlemen. I made a mistake, yer Honors." Then he sat down, and if the court was not satisfied it did not disclose the fact.

To the Point. "In time of trial," said the preacher, "what brings us the greatest comfort?"

"An acquittal!" shouted a low-brow, who should never have been admitted by the usher.—Toledo Blade.

Quite Evident. The man could name all the state governors, but not a single league pitcher.

"I shall naturalize you," said the judge, "but you are far from being assimilated into an American citizen as yet."

Legal Profundity. A newly made magistrate was gravely absorbed in a formidable document. Raising his keen eyes, he said to the man who stood patiently awaiting the award of justice: "Officer, what is this man charged with?"

"Bigotry, your worship. He's got three wives," replied the officer.

The new justice rested his elbows on the desk and placed his finger tips together. "Officer," he said, somewhat sternly, "what's the use of all this education, all these evening schools, all the technical classes an' what not? Please remember, in any future like case, that a man who has married three wives has not committed bigotry but trigonometry. Proceed."—Lincoln State Journal.

The Sanction of an Oath. A woman recently appeared before a magistrate in New York city to give her testimony as complainant against a colored individual who had annoyed her.

"Do I have to swear, judge?" she asked the magistrate.

"Yes, madam."

"But, judge, I don't like to."

"You must. Every witness makes oath before testifying; the law requires it."

"Well, if I must, I must, I guess; but I don't like to."

"Yes, you must."

"Well, damn."

And the court nearly fell off the bench.

Phalacrosis.—As the result of hostile demonstrations, one of the leading citizens of the burg had been taken before the village justice on a charge of assault and battery. He was fat, evidently good-natured in ordinary circumstances, and the proprietor of a conspicuously shining pate. The prosecuting attorney was acting in a perfunctory way, secretly hoping for an acquittal, because he did not wish to arouse the political antagonism of the leading citizen. However, one of the witnesses was the village physician, whom the prosecutor loved not and sought to humiliate.

"You are prejudiced in favor of the defendant, are you not, doctor?"

"No, sir."

"You are his family physican, are you not? And you are afraid you will lose his patronage; consequently you have wilfully distorted and doctored your evidence here to curry favor."

"No, I have not; but, since you mention my professional relations with him, I think the jury should be informed that he is suffering from phalacrosis."

"From what?"

"Phalacrosis," repeated the doctor.

Whereupon everybody sat up and took notice; the attorneys put on a dignified studious air; the honorable court pricked up his ears; one and all centered their gaze upon the defendant, who acquired that reddish tint which proclaimed that at last he had been discovered.

"What is this phalacrosis?" asked the prosecutor.

"It is a sort of chronic disease of an inflammatory nature which affects certain cranial tissues."

"Does it affect the mind, cause insanity, or anything like that?"

"Well, I shouldn't wish to answer that question as an expert because I am not posing as an expert; but I have known some persons who were suffering from the disease to become raving maniacs, others merely foolish, some showed destructive and pugilistic tendencies, while many others have suffered for years and never shown any mental abnormalities."

"Well, doctor, just tell the jury all about this sickness."

"I decline to do so. I am not an expert in such diseases, and was not summoned here as an expert witness. You will have to call in an expert to answer your question."

And there the matter rested. The prosecutor told the justice and jury the case was not of sufficient importance to warrant the calling of expensive experts and that they would have to ignore the doctor's testimony as unsupported and unworthy of credence. But the jury promptly acquitted the leading citizen, "because," as the foreman explained, "Doc said there was something the matter with his head; 'phalacrosis' he called it."

When the prosecutor got back to his office he sought enlightenment, and in his dictionary found the following:

"Phalacrosis—bald-headedness."

The doctor also explained, out of court, and the relations between the medical and legal profession in that village are still strained.—The Sunday Magazine.

The Doormat Went Around. A Canadian lawyer tells this story:

A bailiff went out to levy on the contents of a house.

The inventory began in the attic and ended in the cellar. When the dining room was reached, the tally of furniture ran thus:

"One dining-room table, oak.

"One set chairs (6) oak.

"One sideboard, oak.

"Two bottles of whisky, full."

Then the word "full" was stricken out and replaced by "empty," and the inventory went on in a hand that straggled and lurched diagonally across the page until it closed with:

"One revolving doormat."—Everybody's.

THE first thought that comes to one who studies the splendid aeronautic feats which are daily being performed is that aviation is becoming, so to speak, an exact science, and that its exponents have made more rapid progress than ever attended the development of any other epoch-marking invention. Hardly a record in aviation is more than three years old.

"All progress in science and industry," writes Paul Matter in La Revue Bleue, "establishes new relations between men and, consequently, new adjustments of law. We are far from the days when the ideal of existence was "to be born, to live, and to die—all in one little village." In our grandfathers' time, a man bound himself to the soil, limited his ambition to increasing his crops, had dealings only with his nearest neighbors, and if he indulged in litigagation it was merely about boundary lines, local oppression, and gunning rights. But the inventions of the nineteenth century ended such stagnation. Railroads turned things topsy-turvy in the country districts, brought nations into community by multiplying international relations, and transformed the conditions of international life. New customs were established and new laws.

"Then came electricity, introducing alacrity and response to instantaneous exigencies in commerce, finance, and diplomacy. Again new laws. And now aviation is playing its part in legal readjustment. With the heavens invaded by sphericals, dirigibles, and aeroplanes, new conflicts of interest arise and new enactments must follow."

The problem of air navigation is yet far from complete solution, though it has been established that with suitable air craft under suitable conditions men may fly for considerable distances. So far there is practically free and unlicensed movement through the unchartered atmospheric vault. Anyone has been permitted to soar aloft who cared to risk it. No one has asked Ariel or any of his imitators to show his license. Soon, however, an aeronaut will be compelled to take out papers for the protection of passengers and for the due regulation of this new form of traffic. Aerial carriers are already in successful operation in Europe and are freely patronized, as is disclosed by the illustration on the reverse of this page.